NATIONAL ARCHIVES OF INDIA

THE
ASIATIC SOCIETY OF BOMBAY
Town Hall, Bombay.

NATIONAL ARCHIVES OF INDIA

Digitized with financial assistance from
NSDL
Technology, Trust & Reach
on 16 November, 2018

NATIONAL ARCHIVES OF INDIA

NATIONAL ARCHIVES OF INDIA

MARRIAGE FORMS

UNDER ANCIENT HINDU LAW.

Gowardhanram Madhavaram Tripathi, B.A., LL.B.

£2028

N. M. TRIPATHI & Co.,

Booksellers, Kalbaderi Road.

B 16 92

Bombay:
PRINTED AT THE
BOMBAY EDUCATION SOCIETY'S PRESS,
BOMBAY.

1906

NATIONAL ARCHIVES OF INDIA

ORI
301.420953
Tri/Nor
62028

NATIONAL ARCHIVES OF INDIA

CONTENTS.

PARA.		PAGE
1.	Uses of the History of Law to Lawyers	2
2.	Mayne on the Eight Forms of Marriage	3
3.	Marriage in the Vedic Age	4
4.	Two Groups of Forms : (1) Ceremonial and (2) Non-Aryan	6
5.	Aryans Adopt Non-Aryan Forms	8
6.	First Germs of Endogamy	11
7.	The Meaning of the Word "Dharmya"	14
8.	Opinions of Kavis or Experts of the Time on the Forms	16
9.	Details of and Grounds for Their Opinions	18
10.	Relative Worth of the Eight Forms according to Manu	21
11.	Compounding of Forms allowed by Manu	22
12—14.	The Attitude of the Aryans and Non-Aryans towards these Forms of Marriage. Illustrations from the Rámáyaṇa and the Bhágavata Puráṇa	22
15-16.	Effects of Illegal Marriage on the Devolution of a Wife's Property on Her Death	25
17-18.	The Gándharva Form	27
19.	The Svayamvara	30
20-21.	The Prájápatya Form	31
22.	Monogamy and Polygamy in Ancient India	34
23—25.	The Daiva and Ársha Forms	35
26—34.	The Bráhma Form	38

NATIONAL ARCHIVES OF INDIA

NATIONAL ARCHIVES OF INDIA

ERRATA.

Page.	Line.	Correct.
1.	20.	Sútras.
5.	10.	Súryá.
6.	1.	Saptapadí.
6.	12.	Smṛiti.
6.	13.	Śruti.
7.	21.	Káthiáwár.
8.	2.	Gandháras.
9.	5.	Gandháras.
10.	3.	Śúdras.
10.	33.	Aśvaláyaníya Gṛihya Sútras.
14.	10.	inconsistency.
15.	6.	Śúdras.
16.	29.	Vaíśyas and Śúdras.
17.	3.	Kálidása.
17.	5.	Kulluka.
17.	29.	Náráyaṇíya Vṛitti.
18.	12.	Vaiśya,
18.	20.	as may.
19.	3.	Sútra.
23.	11.	Sítá.
25.	5, 12, 15.	Kṛishṇa.
25.	22.	brother.
30.	6.	*Cum Copula.*
32.	6.	sought.
32.	25.	Gṛihya Sútras.
37.	10.	Árshа.
38.	4.	bidder.
42.	11.	Smṛitis.
42.	16.	ideals.
46.	14.	Súdra.
46.	24.	much care to distinguish.
47.	5.	chárini.
52.	12.	those.
52.	16.	the.
54.	14.	Manu.

NATIONAL ARCHIVES OF INDIA

Page.	Line.	Correct.
55.	2.	non-ceremonial.
56.	6.	sons.
56.	13.	sons.
56.	29.	Kullúka.
57.	25.	compounded.
57.	34.	Kálidása's.
62.	8.	offerings at.
62.	9.	Bráhmaṇas.
65.	11.	*sui juris.*
65.	29.	Kullúka.
66.	34.	Veṇkateśa.
70.	4.	discretion.
70.	21.	shows.
72.	12.	Vishṇu.
72.	21.	Kullúka.
75.	32.	pronounced the bride.
76.	14.	connection.
76.	17.	Bráhmaṇas.
77.	33.	Sútra.
83.	22.	standpoint.
85.	27.	Mayne.
87.	5.	Saptapadí.
96.	12.	usages.

NATIONAL ARCHIVES OF INDIA

MARRIAGE FORMS UNDER ANCIENT HINDU LAW.

INTRODUCTORY EXTRACTS.

(These are given below with a double object, for the lawyer and the layman. The former will find in them a supplement to the ideas drawn from his law books by way of *addenda et corrigenda*. The latter will find in them an introduction to the subject.)

"If (a father) having decked a maiden (daughter) should give her (in marriage) preceded by water (*i.e.*, having dropped water as the first ceremony committing him to make a gift of her), this is Bráhma marriage. 2. If having decked her, he should give her to a Ṛitvij priest in the Vitata sacrifice, this is Daiva (form of marriage). 3. As they two (*i. e.*, bride and bridegroom) perform their duties jointly, it is Prájápatya (form of marriage). 4. If (a man) having given a pair of cows (to her father), should marry (her), this is Ársha (form). 5. If he should marry after having entered into a reciprocal stipulation (with her), this is Gándharva (form). 6. If he should marry after having gratified (her parents and others) with money, this is Ásura (form). 7. If he should carry her away from the sleeping and the negligent (or intoxicated), this is Paiśácha (marriage). 8. If he should carry her weeping from the weeping after killing (people) and breaking (their) heads, this is Rákshasa (marriage)."— *Áśvaláyanîya Gṛihya Sutras, I*, 6.

"The Prájápatya procedure is laid down to be the gift of a maiden, having after (that) said in words: 'Let them perform their duties.' . . . The reciprocal union, by desire, of bride and bridegroom—that itself is to be understood as the Gándharva relating to sexual intercourse and originating from passion. . . . Where one has intercourse in solitude with (a maiden) who is asleep or intoxicated or not on her guard, it is the eighth, the lowest, the Paiśácha (form), the most sinful of marriages. To the leaders of the regenerates (*i.e.*, to the Bráhmaṇas) the gift of a maiden by means of water (ceremony) is preferred. As regards the other classes, by reciprocal desire (love)."—*Manu, III, 30, 32, 34, 35.*

NATIONAL ARCHIVES OF INDIA

(It will be noted from the above that under the usages of ancient Indian races, marriage was held to be completed by eight procedures now called "forms of marriages." In some of these, ancient ideas invested the first actual defloration of a virgin with the full dignity and force of the marriage tie, whatever the moral aspect of the union! The Gándharva form held a marriage completed by such process where the virgin was a consenting party to the act; the Paiśácha form gave it validity even where the act was done *without* her consent, and the Rákshasa form recognised the marriage where she was violated *against* her will and by force. The five other forms were completed by a mere *consensus* of the parties concerned or of their parents with or without religious ceremonies and moral covenants, and cohabitation was the object and not the means of these marriages. The Gándharva marriage seems to have been shunted in Áśvaláyana's time from the former to the latter class, as would appear from a comparison of his definition with that of Manu. The ideas of adultery and rape seem to have been confined to those cases only where a virgin had already married according to any one of these forms and did not apply where she was not so married. As will be shown further on, this was only an enunciaton of usages as distinguished from positive law and morality.)

EMINENT lawyers have at times been tempted to diverge in the direction of history to trace the sources of the institutions and rules in force under modern Hindu Law. The temptation, if it has at times resulted in vague speculation and curious errors in the administration of law, has also at times led to substantial research and helped to explain and harmonise not a few points of law, and has, in these cases, enabled the lawyer to be in touch with matters which, without such assistance, would have bewildered the best intelligence. Among writers who have tried to work in this spirit, and with eminent success, the names of Messrs. West and Bühler, and of Mr. J. D. Mayne, will instantly occur to any one who is conversant with the subject, and will be

NATIONAL ARCHIVES OF INDIA

gratefully remembered by all who have had occasion to seek assistance from their pages, deriving benefit thereby. The present is a contribution in the same direction, though it is limited to only one point of one chapter in Mr. Mayne's admirable and elaborate work on Hindu Law.

2. The well-known eight forms of marriage,* as known to ancient Hindu Law, though usually of antiquarian interest only, are mentioned in all works on modern Hindu Law. Mr. Mayne has tried to determine the relations of these forms with one another and to arrange them in something like the order of geological strata. After having mentioned them in the order given by Manu, he concludes, or rather enunciates, that "their antiquity is in the inverse ratio to the order in which they are mentioned." It is not proposed either to recapitulate his speculations and comments on the various phases of the subject, or to criticise him and his method of looking at things, which however scientific in its appearance, is based on foreign analogies rather than on indigenous materials. It would, perhaps, be a wiser course for both writer and reader to leave Mr. Mayne's case to take care of itself, and to be content with what is offered here as being based on some evidence, while the reader is left to find out and compare for himself if there be any evidence for the interesting proposition advanced by Mr. Mayne.

* Extracts, explaining the nature of these forms, are given as introductory extracts at the top. The extracts from Áśvaláyana are in prose and belong to a later date than Manu. The extracts from Manu are given below those extracts to show points of difference between the two.

NATIONAL ARCHIVES OF INDIA

3. The earliest notions of Indo-Aryan marriages are those embodied in some of the Vedic hymns. A number of references and a summary of nuptial rites pertaining to this stage are given at p. 400 of Mr. V. N. Mandlik's work on Hindu Law and in the footnotes on that page. Mr. Mandlik concludes with the remark that "the rite was a simple one, and free from the symbolism which now prevails." We shall deal here only with such of the rites as were of practical value. The reader will find a glowing account of, and commentary on, the great marriage hymn of the Rig-Veda (X, 85) in the "Vedic India" of *The Story of the Nations* series, pp. 367—372, while the original text will afford a useful clue to some of its mantras, which continue to preserve their interest in our current ceremonials. The Vedic ceremonials, which are called so "simple" by Mr. Mandlik, and have evoked a feeling of self-complacence from the author of "Vedic India," as clearly showing a free and sacred union of hearts as the basis of the nuptial tie among the Aryan ancestors of both East and West, form rather a solemn civic procedure than a simple religious rite. The bride is represented as herself "courting" the husband,* the word for courting being the root *van*, which, as explained in later works on "The Science of Love," means winning the heart of the object of one's love. Her father only gave her the husband whom she had desired in her heart.† The bridegroom took her by the hand to be one with him in the office of "the

* Rig-Veda, X, 27 (12).

† Rig-Veda, X, 85 (9).

NATIONAL ARCHIVES OF INDIA

rulers of his home."* She was given to him by the sacred fire with long life for both.† They both joined in prayers to Indra, to Prajápati, and to Viśve Devas, asking Prajápati to bless them with Prajá (issue) and Viśve Devas to place them face to face and to unite their hearts. The two drove together in a chariot and entered the bridegroom's house. In another hymn,‡ there is a competition between the Viśve Devas (lit., " all Gods ") for the hand of the maiden Suryâ, Daughter of the Sun. As, when there is a race run for the seizure of a stake or flag planted at a distance from the competitors, only one of them comes forth successful and is the first to reach and seize the stake, so in the race between the Viśve Devas, the twin gods Aśvins who represent the twilight of the dawn, succeeded in winning the daughter of the Sun, who ascended their chariot, and the rest of the Viśve Devas *consented* from their heart to her ascent. Such is the procedure at a Vedic marriage which has formed the nucleus round which covenants and ceremonies have sprung up in later ages, and which must be borne in mind by one who would understand its subsequent religious and legal developments. This is the *first stage* of Indo-Aryan§ marriages, disclosed by the earliest evidence known. Neither the eight forms nor even any " forms " of marriage are spoken of at this stage, nor

* Rig-Veda, X, 85 (36). † Rig-Veda, X, 85 (39).

‡ Rig-Veda, I, 116 (17).

§ The term Indo-Aryan is used throughout this article to mean the Aryans (*Sanskr.*, Áryáh) who came to India, as distinguished from those Aryans who went elsewhere, and secondly, from the crystallised castes of the Indian Aryans in later times.

NATIONAL ARCHIVES OF INDIA

is the Sapta-Padi mentioned. Of course, there is no reason to suppose that our information is exhaustive, but this is our only direct information, and the rest will be *indirect* information in the shape of subsequent circumstances pre-supposing a prior state of things from which the circumstances must be *inferred* to have sprung as effect from cause.

4. The next stage of the marriage law and rites is the one during which the eight forms of marriage come into existence in all their pristine vigour. The age of Manu is not the true Vedic age. His work is the first full blossom of the Smriti age as distinguished from the Śruti or Vedic Age. The eight forms mentioned by Manu may be classified into—(1) those which were accompanied with ceremonies, and (2) those which were not so accompanied. The Bráhma, Daiva, Prájápatya, and Ársha forms belong to the first group, and the rest to the second. There is another distinction between the two groups, and that is the etymological one. The first group includes the said four forms as consisting of ceremonies performed *in honour* of Brahman, the Devas, Prajápati, and the Ṛishis, respectively, and may be called the ceremonial group. The other group is distinguished not only by the absence of any ceremonies, but also by the fact that the name for each form signifies the name of the one or the other of the non-Aryan tribes among or through whom the Indo-Aryans may be presumed to have lived or passed in the course of their immigration into India or before it. The Paiśácha form means the form practised by or among the

NATIONAL ARCHIVES OF INDIA

Piśáchas; the Rákshasa form means the form practised by the Rákshases (*sing.*, Rakshas, also called the Rákshasas); the Ásura, the one practised by the Asuras; and the Gándharva practised by the Gándharvas. That the Rákshasas* and Asuras† were types of aboriginal races which once lived in archaic India is pretty well settled. The Paiśáchas‡ are known to Hindu mythology as being goblins wandering at night, and the form of marriage, which means marrying by secret and stealthy embraces, may well be presumed to have been prevalent among a tribe of night wanderers. The Gándharvas are a mythological band of divine singers and choristers who, with the Apsarasas or celestial nymphs, waited upon the Indian Jupiter and sang in sonorous tones while the Apsarasas danced. The profession of the Apsarasas in heaven was analogous to that of the dancing girls on earth in this country, and their relations with the gods and the Gándharvas were analogous to those of Khavás women with the Rajput princes and their Khavásas respectively in modern Kathiawar. The heads of a section of the Gándharvas were like the heads of horses, not much unlike those of the crew of Milton's Comus. The Gándharvas and Apsarasas were reciprocal spouses§ whose marriages, if such there were at all, were undoubtedly contracted in the Gándharva form. Whether there ever was any actual tribe or race of that name, is a question which has not yet occurred to an orientalist for

* See MacDonnell's *Sanskrit Literature*, pp. 114-115, for a short reference to these.

† *Ibid.* ‡ *Ibid.* § *Ibid*, pp. 107-108.

NATIONAL ARCHIVES OF INDIA

consideration. But there was a Vedic tribe of horse-breeding Gándharas* in the valley of Kabul, and whether the horse-headed Gándharvas may be identified with this race may well form an appropriate point for debate by orientalists. MacDonnell† mentions that the Gandharians and Indians are said to have figured as a part of the army of Xerxes during his invasion of Greece, and that Herodotus even describes their equipage. Whether the Rákshasas, the Asuras, the Paiśáchas, and the Gándharvas, were races which were once extant, and whether they practised the quasi-criminal and even criminal method of marriage from which the four forms of the second group derive their names, are questions which had better be left unsettled for our purposes. It is enough to know that the tribes to whom these forms are attributed were not Indo-Aryans of the same stock to which those who practised the ceremonial group of marriage forms belonged. Under these circumstances we may distinguish the forms adopted by the former as belonging to the non-ceremonial or non-Aryan group.

5. In considering how this non-Aryan group came in for enumeration among the forms mentioned by Manu in connection with the Aryan races who alone were expected to follow his laws, one has to bear in mind the history of these races so far as it has been unearthed by Oriental Scholars. Whether the whole Aryan group of races separated beyond the Himalayas or on this side of it, Max Müller may

* *Story of the Nations Series*: "Vedic India," p. 324.

† His *Sanskrit Literature*, p. 409.

NATIONAL ARCHIVES OF INDIA

be taken to have proved, along with others, that the region of the Sapta Sindhus, or the seven streams of the Indus, formed the earliest home of the Vedic Indo-Aryans. They must, in that case, have first come into contact with the Gándharas of the Kabul valley, and the home of the Gándharvas, along with that of the Devas, or gods, and other demi-gods, such as the Yakshas, which has been invariably and consistently placed by Sanskrit authors from the earliest to the most recent times as one or the other spot nearest or above the Káshmir valley; while the Asuras, Rákshasas, and Paiśáchas have always confronted them throughout India. There is no wonder, then, that the Gándharvas should have been invested with a character more mythical than that of these three races, and that the marriages of the race with whom the Indo-Aryans seem to have first associated rather than quarrelled should have found imitators among the earliest Aryan warriors who, in time, began to be known as the Kshatriyas. The Gándharva form became not only from an early date the favourite form for the Kshatriya warriors, but was also the least repulsive of the non-ceremonial group. The Ásura form stood next in the degree of repulsiveness, and both forms could at least be viewed with equanimity by the civil and criminal law. It is quite intelligible in that way how, in Manu's time, these two non-Aryan forms came to be considered unobjectionable for even Bráhmaṇas,* while for the Kshatriyas who had no doubt to deal measure for measure with their non-Aryan foes, even the whole

* Manu, III, 23.

NATIONAL ARCHIVES OF INDIA

non-Aryan group of forms came to be legalised,* and the rest of the Aryan sections, the Vaiśyas and the Śudras, were allowed to debase themselves by the practice of the Paiśácha form in addition to the two permitted to the Bráhmaṇas,† and no reason was found for allowing them the use of the violent Rákshasa form. It is in this sense of "permissible" only that Manu calls these non-ceremonial forms "Dharmya" for the different sections of the Aryan race, and, though he does not say so, it is possible and perhaps even probable, that at first all non-Aryan forms except the Gándharva were permitted only where Aryans married non-Aryans. The legitimate presumption under the circumstances is that the Indo-Aryan communities began to import into their life the non-Aryan forms of marriage from the usages of the non-Aryans‡ with whom they came into more or less contact at a later stage than the Vedic period, and that, so far as the Indo-Aryans are concerned, the more ancient forms are those of the ceremonial group and of the non-ceremonial, as is supposed by Mr. Mayne. Even as between the non-ceremonials the Gándharva seems to have been the most ancient of its group with this race. It may be that the ancients somewhere may have been familiar with the non-ceremonial forms, before the higher sense of the Aryans evolved the better forms, but, so far as the Aryans of India are concerned, they had their own nobler ways—and these only—in marrying, before they found among

* Manu, III, 23. † *Ibid.*

‡ Áśvaláyana says that one may at marriages recognise the local usages: *see infra, para.* 29, and Áśvaláyaniya Gṛihya Sutras, I, 7 (1).

NATIONAL ARCHIVES OF INDIA

their fold members who had been imitating the operations of the lower faculties among their barbarian neighbours in the new country where they were beginning to be associated more and more as townsmen and countrymen with common interests. The Aryans as a whole had to face in this way the double problem of living among neighbours who practised the non-ceremonial forms, and of seeing among their own numbers the rise of classes who imitated them. They seem to have met the former situation in the way already pointed out, that is, by dealing measure for measure. Their method of dealing with the second problem seems to have been the result of a later situation, and there are materials that can explain it.

6. The seeds of endogamy seem to have been first sown about the time of this situation and, may be, by the situation itself. While the Aryans in ancient Rome appear at the dawn of their history a self-isolating community, refusing to allow marriages not only between Romans and other tribes of Italy, but even between Patricians and Plebians, and condescended to relax this stiffness at a very late stage of their history, the dawn of the literature of the Aryans who came here breaks upon us with a scene bristling with intermarriages between Aryan and non-Aryan races, whether it is the Mahábhárata or the Rámáyaṇa, not to speak of the Puráṇas, that we open for information upon the subject. *Pari passu* though slowly comes in the literature that shows the Aryans adopting the usages of the non-Aryans even when marrying among themselves; but, whenever

NATIONAL ARCHIVES OF INDIA

we are told of the earlier cases illustrative of such adoption, we are also told that it was not quite without repugnance, without a qualm of conscience, and at times even a bold rebellion against the spirit, that the adoption of such usages was allowed. The Niyoga by Vyása upon the grandmothers of the heroes of the Mahábhárata, the procreation of the Pándavas by the gods at the earnest request of their legitimate father to her mother, the polyandry of Draupadī, and the loan of Svetaketu's mother by his father to a brother sage for procreation, are looked upon by Mr. Mayne, and by Mr. Mandlik* as disclosing a state of things where the idea of marriage hardly deserved that name; and we may agree with them so far. But we cannot do so farther. In all these cases the repugnance, the qualm, and the rebellion of the Aryan mind against the adoption of barbarian usages have been pithily and touchingly described in one way or another, though at the same time the prosaic plea of "ancient usage" has been allowed to overrule the sentiment. The two casts of mind so overruling and overruled can only be reconciled when we can presume, if not quite see, that the bulk of our Aryan elders were getting accustomed to the sight of the engraftment of alien usages upon their own stock, while the youngsters and purists who had not been accustomed to move out of the grooves of Aryan sentiments had to be cooled down by the monitions of more experienced heads. The younger generations seem in the long run to have carried the day, as they have usually

* Mandlik's *Hindu Law*, pp. 395 *et seq.*

NATIONAL ARCHIVES OF INDIA

done all over the world, and they achieved this result by exerting a vast and potent influence upon their Aryan brethren or fellow-tribesmen by the power of their intellect and example. They began to practise endogamy and consequent self-isolation from such of the surrounding communities as were leading lives more or less debased by the adoption of non-Aryan ways of living, and their example must have spread among the people. Associations of men, united by sameness of views and stirred into action by sameness of ideals and sentiments must have ceased to be connected by intermarriage with others who entertained the more prosaic views of living; and the first ground-work for an eventual arrangement of the Aryans into the various grades of society, now found to be sharply dividing themselves by self-isolation through endogamy and food-and-water barriers, must have commenced in those early days by the initiation of the well-known four-fold divisions of the Indo-Aryans, with varying and unsteady shades of the endogamous principle to distinguish them. This, and no other, explanation can account for the otherwise glaring self-inconsistencies, contradictions, and divergencies of the ancient writers on the subjects of the so-called approved and disapproved forms as of marriages between higher and lower castes. Modern writers have either stumbled over the matter or ignored it, and it will be enough for present purposes to note that Mr. Mayne's statement that the first four, *i. e.*, the ceremonial forms, are treated by Manu as approved, is not quite accurate, if he means that Manu approved them.

NATIONAL ARCHIVES OF INDIA

For he expressly states that only "*three* are Dharmya"* after enumerating in a previous verse that the poets or the learned men treat the first *four* forms as "Praśasta" for Bráhmaṇa,† and in another that the first *six* are Dharmya for them.‡ These three statements are obviously inconsistent with one another, and the idea of four forms being approved has been accepted by modern lawyers in utter oblivion of this fact, if not in desperation at the sight of a *prima facie* hopeless inconsistency If "Praśasta" be the word for "approved," the four forms are approved for Bráhmaṇas only, and there are other approved forms for the rest. If Praśasta mean approved, some other word will also have to be found out to express the meaning of the word "Dharmya," which in one place is predicated of more than four forms and in another of less than four. Points of the law of inheritance are made to rest on the distinction between approved and disapproved forms as made by judges and by writers of Mr. Mayne's authority among others, and it is consequently worth while examining the ground-work of these distinctions. A way of looking at the apparently inconsistent texts of Manu is presented in the next paragraph, which will show that the inconsistency is only apparent. And the historical hypothesis offered in the first half of this paragraph will materially assist in understanding the practical bearing of that explanation of the texts.

7. The inconsistencies in question are presented by verses 23, 24, 25, and 26 of Chapter III of Manu. The first of these says that the four ceremonial forms,

* Manu, III, 25. † *Ibid*, 24. ‡ *Ibid*, 23.

NATIONAL ARCHIVES OF INDIA

the Ásura, and the Gándharva, in all six are "Dharmya" for the Bráhmaṇa class, that all the four non-ceremonial forms are "Dharmya" for the Kshatriyas,* and that all these last ones except the Rákshasa are "Dharmya" for the Vaiśyas and Sudras. This verse has been explained in para. 5 *supra* in connection with intermarriages between the Aryans and the non-Aryans, and, as the verse is not expressly limited to such marriages, we may take it that the same meaning would also apply to marriages between the Aryan communities *inter se*. "Dharmya" would in that case, and for reasons stated below, seem to mean "permissible at law" or "legalised" in the eyes of the people who would be judging from observation of the actual *practices* of existing communities. Why the Kshatriyas married the non-Aryans under any of the non-ceremonial forms and why the other Aryans were limited to a smaller number in practice has been explained in para. 5. Gradually the same rules of practice would be followed even when both parties to the marriage were Aryans. The way in which the four non-ceremonial forms are called "Dharmya" for the Kshatriyas and nothing is said of the ceremonial forms, two at least of which, *viz.*, the Prájápatya and the Ársha, were certainly open to the Kshatriyas† and were even approved for all communites including these,‡ would seem to suggest that "Dharmya" in this verse means

* A careful reading of the verses will show that in calling these four forms Dharmya for the Kshatriyas, Manu did not mean to hold that the ceremonial forms were not Dharmya for them.

† *Infra*, paras. 8, 13, 18. ‡ *Infra*, para 8.

NATIONAL ARCHIVES OF INDIA

neither "limited by law" to these forms so as to exclude the Kshatriyas from the better or ceremonial forms, nor "approved," but only "permissible by Dharma or law" if the permitted people chose to stoop to them. That this permission was not from Manu, will appear from verses 25 and 26 explained below, where he states what was "Dharmya" in *his* eyes. As we do not know of any writer of law previous to Manu, "Dharmya" in this verse 23 must refer to the opinion of the people and to their general sense, which must have been the outcome of the judge-made law of the Aryan judges of the day, who must have in their turn decided, like the provincial prætors of Rome, upon the basis of the usages of both Aryans and non-Aryans, as also according to their own sense of propriety, justice, and equity in cases outside the scope of old usages by applying the doctrine of *factum valet*, which is nowhere more extensively used than in even the modern marriage laws of their race. "Dharmya" in this verse means, then, "permitted" by the unwritten law of the Indo-Aryans after it had become liberal and comprehensive by absorbing within its body the *jus gentium* which had grown out of the contact of the Aryan and non-Aryan races of ancient India.

8. Verse 24 says that the Kavis believe that the first four, *i.e.*, the ceremonial forms are *Praśasta* for Bráhmaṇas, the Rákshasa alone for the Kshatriyas, and the Ásura for the Vaishyas and Sudras. The word *Praśasta* may mean "approved," but the approval here comes, not from lawyers as may be seen from the opinions of the lawyers set forth in

NATIONAL ARCHIVES OF INDIA

the verses preceding and following this one, but from the "Kavis." A "Kavi" ordinarily means a poet, such as Kavi Kalidas and the like, and it is at times, though rare, used to signify "a learned man" or even "a knower" as Kulluka puts it. Whichever of the two was really meant by Manu, he certainly could not have meant the lawyers by that term: for, as shown, the other verses make the lawyers believe quite differently. The Kavis of this verse seem to have believed very much like that which one might expect either the poetic taste or the layman's learning to relish in a matter so fashionable or aësthetic as the nuptial tie. For who otherwise would *approve* and not merely permit, a Rákshasa marriage simply because it is a warrior Kshatriya's privilege to indulge in war? And the Kavis would not only approve of this form for the warrior, but would approve of that *alone*—"ekam"—for this pet community. And yet that is *the reason* given by a commentator* of a work on domestic sacred fires to explain this predilection. The subject of the forms is treated in the body of the Áśvaláyana Sutras (I. 6, 1) † which are, no doubt, ancient. But the commentator, who must have belonged to a much later date, adds the following details: —

"These are the eight marriages. Among the first four (1, Bráhma, 2, Daiva, 3, Prájápatya, and 4, Ársha) of these, each previous one is Praśasta

* Náráyaṇa Bhatta, author of the Gárgya-Náráyaṇiya Vritti, on the Áśvaláyana Gṛihya Sutra, published by Pandita Jyestharam Mukundji of Bombay.

† See Introductory Extracts.

NATIONAL ARCHIVES OF INDIA

(*in comparison*) to the one that follows. Among the rest (*i.e.*, 1, Gándharva, 2, Ásura, 3, Paiśácha, and 4, Rákshasa) each one that follows is more sinful than the one that precedes it. There (among the eight) the first two are for the Bráhmaṇa, as the other communities do not accept gifts (such as the Bráhma form implies) and do not act as Ṛitvij-priests (who alone are the bridegrooms in the Daiva form). Gándharva is for the Kshatriya, it being so found in the Puráṇas. Rákshasa is also for him, he *alone* having to do with battles. As for the Ásura, it is for the Vaishya, he having connection with wealth. The other three forms (Prájápatya, Ársha, and Paiśácha) *are not confined to any particular community.*"

9. The passage is clear in language, intelligible by reason, and can throw light on other points. In the first place the order of the forms as laid down by Manu * which Mr. Mayne relies upon as being arranged according to the inverse ratio of their antiquity, is essentially different from that arranged here, as may be seen by a comparison of the two arrangements. Manu's arrangement was only meant for convenience of concise reference to smaller groups of the eight forms in the verses which he has made to follow this. The idea of antiquity was not present to his mind; nor even, as shown, do facts tally with the idea worked out by Mr. Mayne. The only order in which it is possible to arrange them is the one given in the above passage in the order of the religous merits of the different forms. The first place belongs, in order of

* III, 21.

NATIONAL ARCHIVES OF INDIA

religious and, we may say, even ethical merits, to the ceremonial group. Among the four forms of this group, Áśvaláyana, in the above mentioned Sutra says that the Bráhma, the Daiva, the Prájápatya, and the Ársha forms by their religious merits sanctify 24, 20, 16, and 14 generations *respectively* of the issue of the pair married under each form. Manu* himself numbers these generations as being 21, 14, 12, and 6 respectively, thus *preserving* the same order of the religious merits of the forms as is laid down by Áśvaláyana. He adds† that sons born of these marriages are possessed of the Bráhmanical calibre of mind, and of beauty, vigour, wealth, religious-mindedness, and longevity up to a hundred years. The sons born of the other or wicked marriages turn out liars, wicked men, and haters of the Bráhmanical Dharma—a belief which may be explained by referring the reader to the character and complaints of the bastard in Shakespeare's *King Lear*. That the ceremonial and non-ceremonial groups should be approved and disapproved respectively, as stated by Manu, by the Kavis of his time, can now be understood and appreciated. Whether the Kavis were of the species of the author of *King Lear*, or of the commentator of Áśvaláyana, may not be quite certain; and the fact that the power of the groups of forms to endow sons with particular calibres has been noted by Manu as a phenomenon in nature, is not one which seems to have weighed with him in his character of law-giver, as will be apparent later on from the verses where he says that in reality all but three forms are

* Manu, III, 37-38. † Manu, III, 39, 40, 41.

NATIONAL ARCHIVES OF INDIA

Adharmya or illegal. When, therefore, he speaks of the four ceremonials being Praśasta, and adds that they are so far Bráhmaṇas, while there are other forms which are Praśasta for other communities, his express words that in so stating he is only reiterating the opinion of the Kavis are not to be taken as surplusage, for he does also intend to distinguish this from his own opinion as law-giver. The passage from Áśvaláyana's commentator shows further that Praśasta is opposed to "more sinful" and therefore means only "more virtuous," in deed and result so far as the believers believe. The word would be more appropriately and adequately translated as meaning "preferred in comparison" than as meaning "approved," but it seems that the preference or approval has at all events no necessary connection with the law-giver who approves and even dictates a different arrangement as his conclusion. One thing is Praśasta in the eyes of the Kavis who had made a sharp division between the group which was evolved from the Vedic nuptials and the group which had come to them as an infection from the non-Aryan barbarians, and with a sentiment for what is one's own and against what is not so, the Kavis call the former Praśasta* at all events for the religious section —the Bráhmaṇas—of their race, and view the other forms with different shades of approval for their other sections, and with absolute disapproval so far as the Bráhmaṇas are concerned. These last seemed in the eyes of the Kavi to mar the picture of their

* Compare this statement as to *four* forms being Praśasta for Bráhmaṇas with that as to *six* being Dharmya for them in para. 7.

NATIONAL ARCHIVES OF INDIA

sanctity by having anything to do with the non-Aryan forms. The law-giver, after reciting this sectarian view, proceeds, as will be seen, to sift the matter with a more analytical, unprejudiced, and practical genius than merely racial or religious sentiments could suggest.

10. Manu swept away all these distinctions and substituted others which are at once intelligible and unobjectionable. Of the eight forms of marriage, he permitted five and held the remaining three to be absolutely illegal. The Rákshasa, the Paiśácha, and Ásura, were the three forms which had no reference to the consent of the bride, and he absolutely prohibited them. Of the remaining five which were all permitted, he treated the non-Aryan Gándharva and the Aryan Ársha as legal but morally inferior* to the remaining forms which belonged to the Aryan or ceremonial group. The common characteristic of these five forms was that the joint consent of the bride and bridegroom was essential to them. Child marriages, as known at present, were quite foreign to the sphere of these five legal forms, and were only possible in the Ásura form or in the two illegal forms. These propositions may startle us who belong to the present age in India, but they are the only ones which the essential conditions of the forms as known to ancient India can present.

* If there were forms which were approved or disapproved by Manu, the terms can only be appropriately applied in connection with these three and the two forms, respectively, while the three illegal forms were, treated as no forms.

NATIONAL ARCHIVES OF INDIA

11. He added to these eight forms what may be called compound forms and made them legal. He allowed a Kshatriya to enter into a legal marriage by adding the Gándharva to the Rákshasa, which, without the Gándharva, was absolutely illegal. Marriage by capture was according to this ordinance bad, but if the captured girl happened to have willingly entered into the Gándharva union with her captor, the marriage so compounded was legal. Such marriages would be marriages by capture of willing girls wrested by their lovers from the control of parents, if we paraphrase the language of Manu into our own.

12. The last two paras. are spelt out of Manu III, 25, 26, by means of their surrounding context and other references. This is, however, not the place to expound them with the subtle rules of legal and classical interpretation for our guidance. It is enough to note, in the first instance, that the three invalid forms were not only prohibited from a moral point of view, but carried with them consequences which rendered them practically illegal. The feeling on this subject among the Aryan as well as non-Aryan Indian races of the time will explain this. In the great epic of the Rámáyaṇa, for instance, the non-Aryan tribes are represented as resorting to Rákshasa form of marriage. Váli, the head of the Vánara tribe, married his brother Sugrīva's wife in this form, and Sugrīva had to seek alliance with Ráma. When Ráma pleaded that this conduct of Váli was sufficient justification for punishing him with death, Váli's reply was that he had been amply justified by the usage of his tribe, and that it was

NATIONAL ARCHIVES OF INDIA

injustice to judge him by other laws. His son by that marriage was Aṅgada who, upon his father's death, followed Ráma and Sugrīva as their devoted adherent and looked with no repugnance at his mother's remarriage with Sugrīva. The connubial ideal had reached a higher stage with the Rákshasas whom Rávaṇa, the great enemy of Ráma represented. He carried away Sītá, but her mere capture was not enough justification in his eyes for entering into the actual Rákshasa marriage with her. Unlike Homer's Paris, he kept Sīta for twelve long years in his solitary garden and kept on wooing her all that time for the favour of what, in legal language, could only be called a Gándharva marriage. He failed in his courtship and solicitation, and his virtue lay in not forcing her to his embraces. This twelve years' patience in the great captor of the Indian Hellen can only be accounted for by referring it to his regard for the marriage usages of his tribe, and that usage, if we can identify it with these feelings of Rávaṇa, gives as a clue to the compound of Rákshasa and Gándharva forms mentioned by Manu as legal for Aryan Kshatriyas. The Aryan forms seem to have differed from the non-Aryan in this feature that, whereas the married wife of another man was among the non-Aryans a fit object for the Rákshasa or Gándharva marriage, the Aryan forms seem to have insisted upon her being a virgin if the marriage was to be legal. The frequent exhortations of the Aryan law-givers to the Aryans to marry only that maiden who had not been previously married to another, seem to have had this distinction in view. It was

NATIONAL ARCHIVES OF INDIA

only when their precepts had been universally accepted and the circumstances which they were meant for were forgotten, that their texts on the subject were interpreted as prohibiting marriages with widows or women who had married and lost their husbands. European scholars might be induced to view this mode of interpretation with suspicion against Brahmanical ascendency. As illustrated by Mayne and others in other directions, the Brahmanic lawyers who flourished after the purposes of original texts were forgotten, were often unconsciously led into supposing that these texts had a meaning and could appropriately explain the usages of their own times.

13. The Rámáyaṇa is full of incidents which show the conflict of life and thought among the races that were then coming into contact. Rávaṇa's youngest brother so far recoiled from the views and conduct of his sovereign and brother that he eventually went over to Ráma's side, though he had no hesitation in marrying his widow as lawfully his own. In one sense the way of Ráma against Rávaṇa may be looked upon as the war of the social purists of the Aryan tribe against the advocates of non-Aryan usages of marriage. Rávaṇa captured Sítá, not because he had been dreaming of her or had met her at an accidental interview, but because Ráma had refused to marry the sister of Rávaṇa and had followed up his plea of monogamous vow with insulting and maiming her when she tried to kill Sítá to enable him to overcome the compunctions of marrying a second wife during the life of the first. The Rákshasa lady

NATIONAL ARCHIVES OF INDIA

thought he could as well have herself for his single living wife and stick to his vow if Sītá were killed.

14. The great hero of the Bhágwata Puráṇa furnishes another illustration for our subject. The mission of Śree Kṛishna's incarnation as there made out was to take up the gauntlet against the wicked and the impious; to protect the good and the impious, against the Rákshasas and the Asuras; to protect the peaceful subjects of the Lord. Numerous Rákshasas had been capturing innocent women under the non-Aryan instincts of marriage. It was one part of Śree Kṛishna's mission to fight for their cause and to see them released. The fair captives often married their saviour presumably in the Gándharva form, and Śree Kṛishna accepted them, it may be presumed, because the Rákshasas had, like Rávaṇa, been unsuccessfully waiting to secure the consents of their captives to Gándharva marriages with themselves. His marriage with his chief queen Rukmiṇī had been a compound of the Rákshasa and the Gándharva forms. It had been proposed by her father and rother to marry her to another prince. She sent a private invitation to Kṛishna, who came, captured her, and married her. That would come within the definition of Manu's compound marriage.

15. The three forms borrowed from the non-Aryans and thus found repugnant to the higher sense of the Aryan mind were not only thus relegated by Manu into the position of an illegal group of forms with the above qualifications, but he also consistently ordained that the law of property affected by such

NATIONAL ARCHIVES OF INDIA

marriages should stand upon the same footing as the law of property in connection with unmarried women. This he did not do in so many words, but in substance. The property of a childless woman married in one of the five lawful forms devolved upon her death to her husband and his family.* The property of a childless woman married in one of the three illegal forms devolved upon her father's family.† The property of a woman, neither betrothed nor married, devolved in the same way upon her father's family by virtue of the general rule‡ enunciated by him to the effect that a wife, a son, and a slave possessed no independent property, but that any property possessed or earned by them "belonged to him to whom they themselves belonged." That he should have prescribed a similar devolution of the property of a woman married in an unlawful form, can only be intelligible upon his having treated her as still unmarried and subject to the same paternal rights as a maiden neither betrothed nor married. The passing of the properly married woman's property to her husband can also be intelligible upon the ground that by lawful marriage she belonged to her husband and his family. Hers was a marriage; the other woman's was not.

16. A compound of the Ásura form and some ceremonial relics survives to this day and is recognized by modern Hindu law as a legal form. Though such a marriage is now legalised, it bears an impression of its character under ancient law in the rules of inheritance to the property of a woman so

* Manu, IX, 196. † Manu, IX, 197. ‡ Manu, VIII, 416.

NATIONAL ARCHIVES OF INDIA

married. It would exceed the limits we have set for ourselves in this article to go into the *minutiæ* of this point. But it would be interesting to note that a class of property desired by such woman is formulated by one of our prominent schools of Hindu law as devolving upon such persons as would be her heirs if she were a *male* and not a female. This startling formula will be more intelligible if we could paraphrase it by saying that she is to be on the same footing as an unmarried or an improperly married woman of Manu's days not ranking as a wife of her husband but as a member of her father's family and allowed in this character to hold some property and transmit it to her own heirs as if she were her father's son. In other words, the modern principle of treating her as a male is a distinguished form of Manu's principle of treating her marriage as null and herself as unmarried.

17. The five forms held legal by Manu included the non-ceremonial Gándharva. Its original non-Aryan character is indicated by the exclusion of a son of such issue from Manu's definition of an Âuras or legitimate son.* A son within that definition ought to have for his mother a lawful wife married with due ceremonies to his father. The male issue of a Gándharva marriage would *primâ facie* not come within this definition and would not be a legitimate son to his father, whereas, according to Manu, " only an Âuras son would be master of his father's wealth," and sons of other kinds would only receive a maintenance.† This treatment of the issue of a form

* Manu, IX, 166.

† Manu, IX., 163.

NATIONAL ARCHIVES OF INDIA

favoured by Manu can be explained by referring it to the non-Aryan origin of the form, as the case would have been otherwise if the form had been Aryan from the very beginning. The defect in the legitimacy of the issue of such marriage seems, in course of time, to have been cured by following up the marriage in this form with subsequent ceremonies to give it a retrospective effect. The marriage would be a compound one, and its issue would come within Manu's definition of a legitimate son. A notable instance of such a compound marriage is afforded by the marriage of Śakuntalá as described in Kálidása's well-known play. Her Gándharva marriage was accomplished at one of her interviews with her husband; and her adoptive father, a Ṛishi, subsequently and in the husband's absence, kindled the Vitata fires and invoked her purification by them.* These were the fires peculiar to the Prájápatya form, and it will be shown later on that another peculiarity of this form was that it was a retrospective ceremony usually performed during the absence of the marrying couple, or one of them. By so adding the ceremonial form to the original non-Aryan Gándharva, the marriage seems to have fulfilled that condition as to compounding by which alone a son begotten of it could be legitimate within the definition of Manu. But if, in this particular drama of Kálidása, we have such a compound marriage with this result, there is in his own Vikramorvaśī, a Gándharva marriage, pure and simple, between its hero and heroine, and the poet makes the male issue of that marriage succeed to his

* Kálidása's Śakuntalá, Act IV, verse 8.

NATIONAL ARCHIVES OF INDIA

father as his legitimate son without any question about the absence of ceremonies. It is, of course, too much to rely upon these instances to make out a rule, but we may safely use them to illustrate the then prevailing notions of the legal character of the Gándharva form. Nor does it appear that the form was confined to the Kshatriyas for the Bráhmaṇa sage Vyása, the great author of the Mahábhárata and other sacred and philosophical works, was himself the issue of a Gándharva marriage entered into between the Bráhmaṇa sage or Ṛishi Paráśara and a non-Aryan fisherwoman, while the latter was carrying the former in a boat she was plying over a river. The form was ultimately given up by others than the Kshatriyas, but the last instance is in point as showing how Manu's precept and actual life in India were in accord with each other.

18. The growing sense of the succeeding ages seems to have been compelled to oust this form by degrees only. For, before the form was pronounced inadmissible absolutely, it was modified, by having the marriage stipulation *prefixed* to the marriage transaction as in the definition given by Áśvaláyana.* A similar transition has been exhibited by the laws of Scotland. When man and woman lived together in open cohabitation and bore the reputation of doing so as husband and wife, this was proof enough of the "marriage state in Christian nations," as held by Lord Moncreiff in 1840.† The same authority may

* See introductory extracts.

† Lowrie *vs.* Lowrie, 2 D. & B., 960, 961.

NATIONAL ARCHIVES OF INDIA

also be cited for the proposition that in that country legal proof of promise of marriage, " followed by that intercourse which generally follows marriage," did prove a marriage by consent to which no formal ceremony or celebrations was essential. This was called marriage by " promise *cam copala.*" This is just the thing meant by Áśvaláyana's definition of the Gándharva form, while the other Scotch form of marriage by cohabitation differs from Manu's definition only in this point that whereas the Scotch law looked to a regular *liaison*, the Indian form gave legal effect to a single connection and that the first one between the wedding pair. The form has seemed too gross and repulsive to more recent lawyers and judges in both countries to be accorded a legal recognition in these days. But as law especially in India has to take note of various usages and varying shades of moral notions, the history and analogies of the form may at any time happen to merit more serious considerations.

19. Intermediate between the Aryan and non-Aryan forms stood the Svayamvara of princesses of royal blood. It has not found place among the marriage forms, either because it was confined to royal houses, while the precepts of law were usually meant to guide the regulation of domestic and private life, or because the Svayamvara was looked upon rather as a method of selecting a husband than a marriage transaction or ceremony by itself. It was, as is well-known, a gathering of princes and great men invited by the father of the bride to compete for her hand by performing some feat, it being the

NATIONAL ARCHIVES OF INDIA

privilege of the bride to select him who excelled. The form was of purely Aryan origin as may be seen by comparing it with the details of the Vedic marriage noted in paragraph 3 of this article, and describing the selection of the Aświns by the maiden Súryá out of the assembled synagogue of gods. The other feature of this form was that the invitation to compete was not limited to the Aryan tribes or to princes. Thus, the non-Aryan Rávaṇa competed for the hand of Sítā, and it was not known in the first instance at the Svayamvara of the heroine of the Mahábhárata that the successful competitor for her hand was the princely hero of the epic in Brahmanic disguise.

20. The ceremonial forms were engrafted upon the old Vedic marriage by the growth of Brahmanic ideals. These ideals taught man to rise above the grosser self and even above the very idea of the subtler self, known to modern world as the human or individual self. Man was to eat, marry, and even live for the higher objects than such self, and the physical sacrifices of the post-Vedic age, were in the course of time, superseded by more comprehensive and real sacrifices for the attainment of abstract ideals. Even marriage was meant to be a sacrifice and an introduction—an inunciation—of the numerous sacrifices which one's life was to consist of and to demonstrate. Love between man and woman meant only a call to enter a life of joint sacrifices of this kind and was allowed a more spontaneous awakening, than that which success and excellence at the Svayamvara competition could give. Man and woman were allowed to enter into reciprocal court-

NATIONAL ARCHIVES OF INDIA

ship called Samvanana, and the result of that test of that union of their hearts was marriage. But why the ceremonies? The ceremonies were meant to propitiate the Vedic gods and even high gods, than those whom the Vedic pantheon could show to physical eyes. The Prájápat ya marriage thus sough to propitiate Prajápati, that abstract God, whom the common ancestors of Indian and non-Indian Aryans worshipped, and who taught man "to live and multiply." The function of that deity in the economy of nature was the selective one of "bringing together bride and bridegroom of equal merits," as the author of the Śakuntalá puts it.* Prajápati one of the deities specially invoked by the marrying couple in the Vedic hymn, wanted them to be thus united, could be propitiated by such union, and drew them into that union. They married thus not for the gratification of human passions, but to fulfil their duty to Prajápati, as we moderns would describe their motives.

21. The idea of paternal rights was foreign to this form. The father of the bride felt, not a right but a duty, and he did so *after* Prajápati had selected his daughter and son-in-law for such a union. As the commentators of Áśvaláyana's Grihya Sutras have noted it, some of the other ceremonial forms were not open to those who were not Bráhmaṇas, as none but the Bráhmaṇas received gifts, while the absence of any gift in the Prájápatya form made it open to all Aryan bridegrooms. The Indo-Aryan father did not make a gift of his daughter to his son-in-law as

* Kálidása's Śakuntalá, Act V.

NATIONAL ARCHIVES OF INDIA

if she were a chattel, but only gave a retrospective sanction to her free exit from his family by blessing her and her husband *after* their reciprocal selection with the sacred formula, "May they perform their duty in the walks of life!" or literally, "May they walk over (perform) their duty." A gift of a maiden is differentiated by one or the other formula requesting the son-in-law to accept the bride as a gift, and he is addressed with a pronoun of the second person and not of the third as here. The duty which they are thus desired to perform was to live and multiply, and the father expected to propitiate Prajápati by kindling the fires of the Vitata sacrifice and offering these prayers to see the young couple make their marriage the starting point for a life of duty. The fulfilment of the prayer was believed to purify them from the touch and contagion of grosser objects of life. It was in this sense that the adoptive father of Śakuntalá was made to light the Vitata fires and pray for her purification by them after her Gándharva marriage was brought to his notice and before she started for her husband's roof. Such was the Prájápatya marriage, the first connubial ideal of embryonic Brahmanism. The form was developed when an Aryan of one community could marry an Aryan, and probably even a non-Aryan of another community, and when Aryan fathers did not think of controlling their daughters. The rise of endogamous spirit and the growing necessity of protecting girls from non-Aryan forms were not favourable conditions for a fuller reception of this form, and the ultimate crystallization of caste and paternal power, as the final

NATIONAL ARCHIVES OF INDIA

result of these conditions seem to have given the last blow to it as being utterly inconsistent with them.

22. Mr. Mandlik has expressed his opinion, and Mr. Mayne has suspected that in ancient India monogamy seems to have been the rule, and polygamy the exception, though they could not see their way to reconcile this higher social life with the aberrations of a people who could raise the Rákshasa and other forms to the dignity of marriages. We have seen how the latter phenomenon came to have a place among the social morality of the Aryans; we are now in a position to see how at the antipodes of this point, the Brahmanic social ideal began its different work "to purify" man and woman. The germs of this purification were supplied by the Vedic prayers and by the monogamous habits of the earliest Aryans before they were differently infected by the non-Aryans. The Prájápatya form affords evidence of this higher trait of the Aryan mind, for one of the later writers on marriage ceremonies brings it to our notice that the Prájápatya form commanded a man neither to marry again, nor to renounce the world, in the life-time of a Prájápatya wife. This added to the circumstances that must have contributed to the effacement of this form from the social usages of a people, who were getting mixed up with non-Aryans and were borrowing their usages. Dushyanta at least, who married Śakuntalá in a form compounded of the non-Aryan Gándharva with the Prájápatya, had another wife prior to her, though he may be taken to have complied with its condition by not marrying a *third* wife after his

NATIONAL ARCHIVES OF INDIA

marriage with Śakuntalá. The practice involved in the illustration indicates how screws must have got loose and how prayers to Prajápati must have been included in polygamous marriages in after times.

23. The Daiva form as well as the Ársha seem to have been direct off-shoots of the Prájápatya, though chronologically the Ársha seems to have been the later of the two. With the introduction of the idea of a sacrifice in the nuptial tie, less advanced minds substituted for Prajápati the Vedic Daus and the Brahmanic Ṛishi himself as objects of propitiation to purify the bride. When it was the father of the bride who was solicitous to purify her, he offered sacrifices either at the Prájápatya or at the Daiva marriage, and when it was the bridegroom who was so solicitous, he had to induce his father-in-law to so purify her. In the last case, if the father-in-law was of the priestly profession and could thereby receive gifts, he was given a pair of cows before he was so induced, and the marriage at which he was induced in this fashion was called the Ársha marriage. The reason why the bridal pair were so dependent upon him lay in the rule that it was only *his* privilege to reach the gods with prayers to purify his daughter. The gods would not receive the prayers otherwise. There was also a secular motive in this matter. As already noted by us, it was necessary under an ordinance of Manu that a wife should be purified in order that her issue might be fully legitimate. The necessity of appealing to the bride's father for the exercise of his privilege of purifying her must thus have arisen from a desire to secure the full legal

NATIONAL ARCHIVES OF INDIA

status to the issue of marriages in deference to paternal rights or paternal wishes, and it is not difficult to understand why new bridegrooms should be anxious in the matter or why Manu should have started the ordinance in question, its operation being to protect and console fathers whose daughters were allowed the fullest liberty of emancipating themselves from the parental control by the higher ideals of marriage.

24. The Daiva marriage represents the bride's father as giving her away to the Ritvij or sacrificial priest in marriage. Why, under the new system of uniting hearts by the selective operations of Prajápati, a young daughter should fall in love with the family priest frequenting her house and whispering the ideal of sacred learning into her ears is easy to imagine. It is equally easy to understand why an affectionate and generous father of such a daughter should deck her with a gay attire and probably a few ornaments, too, on this occasion to express his cordial consent to the match that had been formed without his consent and to convince the world that he had not been compelled to seek virtue of necessity. What was so given by way of decking would pass to the daughter and to the priestly son-in-law, and the idea of a *gift* of the maiden with these articles on her body to her husband would slowly associate itself with the transaction where there was no gift of her in any sense of the term. This gift from him, like his other gifts, to the family priest was believed to secure him into the good graces of the Devas or Vedic gods, as the priest was his usual medium of securing their favour at the

NATIONAL ARCHIVES OF INDIA

sacrifices where he presided. Marrying a daughter to a family priest came thus to have a special significance in the opinion of that age; and to us it has a significance as affording a clue to the circumstances which first led to the idea of gift of a maiden being first imported in an Aryan form of marriage, though it was present neither in the Vedic, nor in the Prájápatya form.

25. The Brahmanic ideal of marriage received a still further initial blow in the Ársh marriage. The fathers of some brides seem to have found it difficult to reconcile themselves to the violation of paternal authority by the selective processes of Prajápati and to have refused or to have become reluctant to give that retrospective consent to the match which was of the essence of the Prájápatya form. The contact of the non-Aryan forms seems to have reconciled even the Brahmanic Ṛishis to stooping to accept gifts from their sons-in-law as the price of purifying their daughters. Mr. Mayne associates the form with the Ásura in origin under a natural mistake as to the common feature of both forms being receipt of consideration by the bride's father. After the above probable genesis of this form we need not wait to prove that the opinion of that learned jurist is only an unfounded guess-work. The connection of the two forms arises, however, in this way, that the existence of the non-Aryan marriage by sale of a daughter to her husband may or must have reconciled the Brahmanic casuist to find no degradation in accepting a gift from a son-in-law for performing a ceremony, while ordinary people must have found, in the acceptance

NATIONAL ARCHIVES OF INDIA

of such a gift *after* the free marriage was over, room for associating it with the acceptance of price paid and at least settled before a daughter was disposed of without her consent to the best bidde by a subsequent marriage. The operations of the lower faculties of the bride's father must at times have enabled him to cloak a real Ásura price under the guise of an Ársha gift, and this appears probable from Manu's treatment of the Ársha. He permits the form, but holds it to be morally inferior as already pointed out, and limits the recipient of the gift to accepting not more than a pair of kine, and prohibits him from disposing of this gift otherwise than for religious uses. The parody of the Brahmanic ideal is completed by saying that the gift was made to propitiate the Ṛishi, the father of the bride, instead of any god, Vedic or abstruse. That the form really arose from an abuse of the Brahmanic ideals and did not originate from the non-Aryan Ásura, may be gathered from the fact that the father of the bride in the form was unaccountably never of another community than that of the Brahmanic Ṛishi, while the bridegroom belonged, as the commentator of Àśvaláyana notes it, to any community and ceremonies were of the essence of the form for both. To say the worst of it, the gift in the Àrsha had, if at all, a retrospective or condoning effect such as is involved in the award of damages under English common law to the father of a daughter against her seducer for "loss of her services" to the parent. While this analogy can extend no further, the Àsura form can supply no analogy at all.

NATIONAL ARCHIVES OF INDIA

26. The last form and that is the one with which this subject must close, is the Bráhma form of marriage. It represents the highest stage of the Brahmanical ideal in the matter. Whether it was the Daiva form or the Ârsha, that happened to be selected according to circumtances, Prajápati ruled the ideals of at least the marrying pair, and the Devas and the Ṛishi were brought into the foreground only as media for communicating with invisible Prajápati. It was left to the Bráhma form to take to a far higher ideal than that afforded by the common sense vision of Prajápati. That ideal was summed up in the prolific word Brahma which has been familiar to India with its variety of meanings and phrases. We shall try to understand so much of it only as is involved in the ideal of this marriage form. The four stages into which life was divided by the ancient savants of this country are well known. The first of these was Brahmacharya, or celibate studentship as it is now called. Waiting upon Brahma would be both literal and adequate translation. The course of study for the twice-born had for its object, the knowledge of Brahma to be acquired in a celibate life. But it was bare knowledge. The student, or, as our University language might describe him, this Bachelor Graduate of Brahma, as soon as he had finished the discpline of waiting upon Brahma, had to to enter upon the Duties of Life, otherwise described as the seasonal and daily sacrifices due from a twice-born Aryan to the Brahma. He could enter this life by entering a Gṛiha or house in partnership with his Gṛiha or wife, the sacred word for both wife and

NATIONAL ARCHIVES OF INDIA

house being the common term Gṛiha, as noted by the commentator of Áśvaláyana's work on Gṛihya Sūtras. The sacrifices thus undertaken were to be offered, not to Prajápati or to the Devas or to the Ṛishi, but to Brahma, which included all of them and comprehended much more.

27. Instead of the Vitata Agni or the special fire kindled to receive the offerings to Prajápati, the offerings to Brahma were received by it through the media of "Fire, non-Fire, and Bráhmaṇas" as Áśvaláyana synthetizes it. It would be entering upon a chapter quite large and distinct by itself to undertake to define or describe this Brahma which was placed as an ideal before the parties to a Bráhma marriage. We shall be content here with the procedure which constituted their marriage, called Viváha, or, literally "Fully bearing" the yoke of duties in partnership.

28. Our ideas of that procedure have to be collected, not from the life or the ceremonies known to modern Brahmanism, but by trying to have such glimpses of ancient life and ways as can appear by allowing such of the ceremonies as have no meaning in the modern life of Hinduism to bear the meaning conveyed by their forms and language, and by presuming that what these ceremonies thus speak to us through longer ages than history can realise or inform, formed the life of and doings of ancient Brahmanism as distinguished from its modern shadows. We proceed with material so drawn and so interpreted.

NATIONAL ARCHIVES OF INDIA

29. We have seen how Prajápati was the selective deity that drew the hearts of man and woman into the bonds of union. It was left to Brahma to test these hearts, to teach them, to discipline them, and finally to cement the lives through which they throbbed. This was done by making the pair journey together through the seven hills or table-lands or Sapta Achalas formed by the intersection of the seven old rivers or Sapta Sindhus of Vedic India. They walked through these lands as self-controlled virgin and bachelor in society, under the seven stars of constancy also known as the Sapta Achalas, and still looked up to by every marrying Hindu. These seven peregrinations are now symbolised by seven paces or Sapta Padī round the sacred fire and by pacing over seven heaps of grain to represent in symbols the hills of old at the Saptáchala Púja na or worship of the seven Achalas. The peregrinations were to begin from the marriage fire, to be directed towards the north, on the northern side of the fire, and to take the pair from each one hill to the other to the farther north, and so on, until all the seven hills were crossed. We find them thus going from the southern homes of the post-Vedic Indo-Aryans to the north-west and returning south-east to their own place and to the sacred nuptial fire from which they had first started.

30. The bridegroom takes the bride all this long way in his society by her right hand. They are supposed in the course of this long journey to pass through that ancient home of the Indo-Aryans

NATIONAL ARCHIVES OF INDIA

whence colonies were emigrating southwards, which still retained the centres of ancient Aryan life, learning and character, to which pilgrims from the colonies returned to pay reverential visits as to their ancient fatherland, and from which they expected to learn and carry back the mightier relics of their uncorrupted Aryan society. Manu laid it down that correct conduct was observed in that land of the gods, and was handed down from generation to generation, and was as essential part of Dharma and study as the Vedas and the Smritis themselves.* This was just the country in which the ante-nuptial peregrinations of bride and bridegroom were ordered to be made with the obvious object of placing them in higher society and in a higher atmosphere to observe and study the practice of higher ideals The land bore the name of Brahmávarta, the land of the ideal of Brahma.

31. As the affianced pair passed through this beautiful, sacred, and ancestral region of mountains and rivers at the foot of the Himālayas, none but the spiritual Brahma and the sacred fire bore them company, none disturbed their confidential talks, or witnessed the sacred verses or solemn pledges whispered by each to the other, or overheard the earnest prayers to the Vedic deities—powers of Nature—offered by these lovers. Only the spiritual and ever-present Brahma and Agni† kept "present on either side of the pair," who passed "between" these two

* Manu, II, 1, 12, 17, 18.

† The materials for this and cognate parts of the rest of this contri bution are mostly drawn from the Samskára Bháskara.

NATIONAL ARCHIVES OF INDIA

and these powers kept themselves there protecting and watching them. Thus associated and guarded, the two lovers stepped forth and paced through the seven hills, the bridegroom pouring his heart to the bride as he walked with her gently but warmly, pointing out: "Thou steppest forth in front of me and so do I in front of thee! Thou followest me and I follow thee! Thou art going along with me and so am I with thee!" And he held her hand in his, warmly pressed no doubt, as he uttered the last consummation of their joint pacing: "Thou art Light and (I am taking thee) to Light!" The last of the seven steps, the last step of the seven journeys was the moment for a pause and for the final recognition of a full-formed friendship tested, confirmed, and hailed with his words to her: "Friend! Finish thy seventh step!" Their marriage was complete with that completed step.

32. While the sacred union of their hearts was thus recognised, their future reciprocal duties were defined and distinguished in a way that may be considered no less accurate than it was poetic. "Look here," said he to her, "I am the Sáma and thou art the Ṛik! I am the sky and thou the earth! Such are we both, and such only let us marry each other, getting children and many sons. We both very dear to each other, longing to shine and full of mental happiness, may we live through a hundred winters!" Instead of exacting the vow of obedience to himself as her lord which is peculiar to Christian as well as modern Indian marriages, the Brahmanic lover promised his partner in the above declaration to be

NATIONAL ARCHIVES OF INDIA

content only with the position of the younger, but inspiring Sáma of the Sáma Veda, and to allow to her the position of the elder or ancient and more revered Ṛik of the Ṛig-Veda from which alone the Sáma derived its treasures, its wisdom, and its riches. And in return he would be the sky that gave to and took from the earth those elements of life which are traced and dwelt upon in so many of the Vedic songs. It was by such union of lives for the performance of the Bráhma-karma—the duties and sacrifices to Brahma—that the Gṛihastha or married stage of life was to fulfil the consummation for which his Brahmacharya had prepared the husband, and the purification by the father of the bride had qualified her.

33. This form, as noted, combined in itself the best elements of all other forms and added much more that was supposed to elevate and ennoble. It began with a more searching, testing, and teaching courtship during the peregrinations, than the Prájápatya had ever looked to, while it allowed the fullest scope to Prajápati's selective art. It gave scope to the anxious parent of the bride to watch the pair, as they emerged from his roof, on the pilgrimage of the Seven Peregrinations and to be relieved from his anxiety for his child by the knowledge that they had acquired the best art of sacred living during that pilgrimage among the best of societies then known, and were finally united only *after* that long society had made them fully acquainted with what was sacred in the world and with each other's merits and shortcomings. He was treated better than the father

NATIONAL ARCHIVES OF INDIA

who, in the Prájápatya, had to be content with a retrospective ratification of what had happened without his knowledge. He was not called upon like the father, in the Daiva, to make a gift of a gay attire to his child to signify that he was not seeking virtue of necessity; for, in the Bráhma form, the daughter sought no more from him, than the simple robe on her person, which our Civil Courts would not attach in execution. He was honourably credited with having given away his daughter as a free and voluntary gift to her husband, and his paternal authority, affection, and, if necessary, vanity, were all satisfied by the scope given him in the matter for emancipating her from his power, or, as lawyers would call it, *patria potestas*. He warned her, as she parted from him, saying: "I release you here, but not there!" Care was taken at the same time to emphasize that she was not being given away by him as a chattel, or to be a chattel, and that divine powers higher than his, and the bridegroom's authority, were giving and taking her. "The intoxicating Drink Divine, Soma, gave her to the Gándharvas (who ruled the marriage selection), and the Gándharvas gave her to the Nuptial fire." So ran one invocation, while another Mantra made her status still clearer and sang: "Who gave her (in marriage). It was Love who gave her. To whom is she given? It is to Love she is given! Love is the Giver, and Love the Receiver! This is Love—Love himself—for thee!"

34. Such was the nature and sphere of the Bráhma form as developed by the Brahmanic ideals

NATIONAL ARCHIVES OF INDIA

in ancient India. It rose to have the highest reception from the highest few in the land, while for the masses and the intermediate classes a graded recognition was given by the law-giver to the remaining forms in such fashion as the fusion of heterogeneous communities then going on made it wise and necessary in the interests of all. It is not correct to say that it was confined to the Bráhmaṇas, or that they worked their own isolation by this form. As the definition of the Bráhma puts it, the form was open to any one "who was learned in the Vedas." In those ancient days any one of the three regenerate classes could acquire such learning if he chose, and a Sudra remained outside the pale of those classes, not by birth but because he chose not to enter the doors of those classes. A form of marriage so ideal and involving such ordeals as the Bráhma implied became in course of time the monopoly of the Bráhmaṇas, not because others were excluded from it but because they felt unequal to its conditions or preferred the simpler forms. We are, of course, not speaking of modern days. That ancient India of which we have been trying to have some knowledge, did not so much to distinguish between community and community in these matters as between those who looked upon human life as a life of duties, and those who looked upon it as man's period for claiming self-centred rights, and for enjoying personally the sweets that sovereignty over the other products of nature could give him. The non-Aryan marriages may be brought under one group, as having aimed at shaping for man a life of such rights and enjoyments.

NATIONAL ARCHIVES OF INDIA

The ideal of the Aryan marriages was to guide man unto a life of duties and to look upon his wife, not as an object of enjoyment, nor even as a mere helpmate in fostering reciprocal happiness but as a *Saha-dharma-charini*—a fellow-partner in the *duties* of life, and the main force of all marriage ceremonies was by the ancient Bráhmaṇas directed towards enabling each wedding pair to act in concert towards that end. The Bráhma marriage was the result of the highest effort of the Indo-Aryan genius to create for man and woman, an unparalleled groove for the perfection of such fellowship. That the Bráhmaṇas happened in the long run to monopolize the form so developed was due to their own aptitudes and abstemiousness or fastidiousness, whichever we call it, and also to their aspirations rather than to any ordinances of Manu on the subject.

NATIONAL ARCHIVES OF INDIA

NATIONAL ARCHIVES OF INDIA

Appendix.

1. The preceding text is intended mainly for the general reader. But the conclusions there relied upon are the results of interpretations of ancient texts and of inquiries into ceremonies and customs. These interpretations and inquiries are naturally of a discursive nature and more suited to a limited class of readers. They are, therefore, embodied in this appendix which also contains some additional matter.

2. Manu's own approval and disapproval of the forms of marriages have been pointed out in the text to differ from the notions now entertained. His opinion is couched in a language which has been misunderstood even by his commentator, but may be translated as below :—

"Of the five forms, three are laid down as Dharmya and two as Adharmya in this Smṛiti. The Paiśácha and Āsura forms should not be resorted to under any circumstances. The forms formerly mentioned may be gone through singly or combined in pairs. The Gándharva and Rákshasa which are laid down in the Smṛiti as Dharmya are those (*i.e.*, of that sort, *i.e.*, combined into a pair)." *

3. This translation gives an intelligible meaning to the words of Manu. Paiśácha and Āsura, or the marriage by stealth and purchase, are grouped together and prohibited, not simply as Adharmya, but as *absolutely forbidden* for all classes and in spite of the predilection of the Kavis in favour of the Āsura for the Vaiśyas and in spite of the permission of the unwritten law to the Brâhmaṇas for the same. He seems to have looked upon the forms as criminal perhaps not even valid by the *factum valet* doctrine

* Manu, III, 25, 26.

NATIONAL ARCHIVES OF INDIA

as will be seen later on. Then, as regards the remaining six forms, he seems to classify them into three other groups, *viz.*—(1) those that are lawful or Dharmya * to all intents and purposes, *i.e.*, absolutely; (2) those that are lawful conditionally; and (3) those that are *primâ facie* Adharmya or not lawful but not absolutely prohibited.

4. The unwritten law of the Aryans based on what we have called their *jus gentium* looked upon the Gándharva and the Rákshasa as "permissible" for the military class, and the Kavis considered the latter as the one Praśasta for that class.

Our first law-giver Manu sanctions only a combination of the two forms into one compound for this class, giving validity thereby to unions where the warrior's bride † was a consenting party by an actual Gándharva union, and was carried away by her husband-elect against the wish of the father by means of successful prowess. If the husband did not so succeed and her Gándharva form were enough to complete her marriage at law, she would have the alternatives either of living under her father's roof as a

* By slight differences in the shades of its meaning, this word seems to alter its exact connotation according to circumstances. In that place Manu calls the forms Dharmya, *i. e.*, permitted by his law and, therefore, legal. The *jus gentium* referred to in para. 7 called certain forms Dharmya for particular classes, *i. e.*, permitted to them by law as special indulgences in spite of the forms having elements which rendered them *primâ facie* not necessarily permissible or good at law.

† The distinction between ancient and modern Hindu Law of Marriage, will appear to consist in this that while the want of the bride's consent is an essential feature of all marriages under the modern child-wife system, as the presence of that consent is the essential feature of the forms, whether ceremonial or not, held valid at law by Manu, while the unwritten law of his time was indifferent to its presence or absence.

NATIONAL ARCHIVES OF INDIA

practical widow or of being guilty of bigamy by living as wife to a second husband if any of her father's choice. If, on the other hand, the husband could make her a lawful wife by successful capture without her consent, her relief by her father from that capture could not enable her to marry a legal husband in the life-time of the captor. It was, therefore, the law-giver's duty not to extend the *factum valet* doctrine to such cases, and hold the marriage completed by the transactions whether the forces were or were not "permitted" by the unwritten law or held Praśasta by the Kavis. He has, therefore, implied that such transactions would not enable the parties to improve their positions by the *factum valet* principle, and he held in express terms that the union of the two forms by a Kshatriya husband was necessary to make his marriage Dharmya or valid under his Smṛiti. Anything short of this or even a combination of these two forms by a non-Kshatriya is implied to be not Dharmya. These two forms are then Dharmya or legal in Manu's opinion on the *condition* that they are so compounded by a Kshatriya only. The results of the non-performance of the condition are not mentioned, probably being fitter to be left to the discretion of the judge according to circumstances which, as illustrated above, may be complicate enough. A form that is not *expressly* Dharmya or Adharmya would seem to operate, and be judged, in a similar way in Manu's opinion. It would be an *impliedly Adharmya form*.

5. It will now be possible to find out what forms are meant by Manu when he says, without mentioning names, that "of the five, three are laid down as Dharmya and two as Adharmya in his Smṛiti" (see para. 10). Which are the five, which the three, and which the two? He has *absolutely* forbidden the Paiśácha and the Ásura, *i.e.*, both singly and conjointly. If, for instance, one married by compounding

NATIONAL ARCHIVES OF INDIA

the Gándharva with the Ásura or the Paiśácha, the society of either of the latter two would vitiate the whole compound. The Rákshasa, though allowed to be combined as above seems to have been otherwise absolutely prohibited. It is expressly Adharmya for the Vaiśyas and Śúdras by the unwritten law as explained and would be equally so for Kshatriyas *unless* combined as allowed. *A fortiori* the Bráhmaṇas, to whom nobody ever extended it, must be clear of it. The form is then Adharmya, expressly for some, impliedly for others in the eyes of Manu. This must be added to the two prohibited forms above given. These then are those *three* forms, *forming the eight minus the said undefined five*, three which would seem *to be prohibited by Manu* as absolutely illegal so as not to *render marriages valid* by any other relieving features. There remain *five* forms only, *viz.*, the four ceremonial ones and Gándharva, out of which three are Dharmya and two are Adharmya in a higher way. That the Gándharva is one of the two, would seem to be obvious if we consider that the Kavis do not think it Praśasta for the Bráhmaṇas, that Manu associates it with the Rákshasa as a supplement to that form, to which its superiority lies in its being permitted to some, by the unwritten law and not prohibited expressly by the poets or by Manu himself. The Ársha would seem to be the second Adharmya form out of the five, the reason for so branding it being suggested by the suspicious character of the gift of cows which the father of the bride was allowed to receive in it. Manu, who has disapproved the Ásura form in the unqualified way shown above and deprecates all receipt of Śulka or bride-price, however trifling, for the relations of the bride,* would only allow it in the *Ársha* for the benefit and honour of the bride and conditions the gift of kine to her father with the proviso that it is to be

* Manu, III, 51, 53, 54, and 29.

NATIONAL ARCHIVES OF INDIA

disposed of for Dharma. A form so suspicious by Manu's own tests would not be *encouraged* by him, and, in the absence of a worse form, must be presumed to be the form impliedly deprecated by Manu as Adharmya along with the Gándharva.

Both forms seem to have been placed under a common category for different reasons as above, and this category of "Adharmya" seems to have meant "morally reprehensible," though connivable at law on the *factum valet* principle.

6. We now reach the following propositions as forming the dictates of Manu on the law on the subject:—(1) The Bráhma, the Daiva, and the Prájápátya are the three purest forms without any legal or moral blemish, and are *absolutely Dharmya, i. e.*, lawful and moral. (2) The Ársha and the Gándharva are Dharmya (permissible) in the sense of the unwritten law, but Adharmya from a higher standpoint of morality. (3) The former three and the latter two form a group of forms which are Dharmya in the sense of being valid at law, whether they may be morally Dharmya or Adharmya as above; and (4) the remaining three forms are absolutely illegal. No. 3 of these propositions is supported by Manu's expressly grouping them together in the same fashion, and ordering that the property left by a childless woman married in any of these five forms so grouped should go on her death to her husband,* whereas that left by one married in the remaining three forms which are absolutely prohibited must go to her parents.† The reason for this distinction in devolution seems to be that the five Dharmya forms are complete marriages by which the wife passed into the family of her husband, whereas in the case of the three absolutely Adharmya forms, the so-called marriage is not to be distinguished from concubinage, the

* Manu, IX, 196. † Manu, IX, 197.

NATIONAL ARCHIVES OF INDIA

marriage is not to be taken to have taken place at all, and the woman is to be taken to be still belonging to her father's family for the purposes of law and inheritance. The text of Yájñavalkya* on the subject is not explicit in the eyes of some who think that he meant to allow the devolution in favour of a wife's parents where she was married in only three of the non-ceremonial forms as above, while the Mitákshará interprets him as meaning all the four non-ceremonial forms. The Mayúkha expressly refers to the above text of Manu, and understands Yájñavalkya to prescribe the above devolution in the case of marriages in only three of the non-ceremonial forms, and to allow the other mode of devolution where she was married in any one of the five forms grouped together and named by Manus The Mayúkha further carries the matter to what in its eyes is the logical conclusion of the whole by prescribing that, where the marriage was in one of the three above forms, a woman's property will not only go to her parents, but will do so even in exclusion of her daughters, though not of her sons who are allowed to divide it equally on her death.†

All this refers to the non-technical strîdhana, and as will be seen from the next paragraph that shrewd and learned jurist, Mr. Justice West, sounded the genuine key-note to the real facts of ancient Indian history when, in adopting the view of the Mayúkha up to its logical conclusion, he explained the system by the formula that the female *propositus* in such cases is to be considered "as if she were a male" and a son to her father for the purpose of inheritance.‡

7. The situation may now be thus summed up and brought into a focus. The five forms in question were

* Yájñavalkya, II, 145, and Mitákshará upon it.

† Vyavahára Mayúkha IV, 10 (26-28).

‡ Bombay, H. C. Reports, D. C. T. 244, pp. 260-261.

NATIONAL ARCHIVES OF INDIA

grouped together by Manu, because, though one of them was non-ceremonial all five involved the *consensus** of bride and bridegroom, and at least the bride was not disposed of by a crime or collusion against her interests. He held these marriages to be valid and sufficient to pass the wife into the family of the husband. As pointed out by Mayne, and as will appear to one who goes through Chapter IV of Manu, the right of widows or of even any woman to inherit any family property was not recognised during this period, except the right of Putriká's and that was by stipulation. As ladies would not inherit any property, provisions for devolution of property possessed by them would not include rules for the descent of inherited property from them to others on their demise, but would be confined to rules in respect of the descent of their strîdhana only. Now the recognised or technical strîdhana would only be possessed by ladies married in one of the five forms held legally valid, while no such property would ever be possessed by ladies married in the three forms which were not held to be legal marriages. In the former case the property left by a woman would pass to her children and failing them to her husband,† for she herself was of *his* family. But when her marriage was no marriage at law, she would have no technical strîdhana to leave behind, and her other chattels, *e.g.*, her earrings, would be her non-technical shrîdhana of which the real owner even in her own life was her father as the pater familias of the family to which she belonged in spite of her so-called marriage. The general rule of the time being that a wife, a son, and a slave could possess no independent property, but that any property possessed or earned by them belonged to "him to whom they them-

* This is said in anticipation of the attempt made elsewhere to prove that such consent was an essential of all ceremonial forms, while the Gándharva was based directly upon such consent.

† Manu, IX, 196.

NATIONAL ARCHIVES OF INDIA

selves belonged,"* *i.e.*, to the pater familias; any property possessed or earned by the women in question would be allowed to remain with her only by an implied license from her father and at his will and would be seized by him or his representative upon her death by virtue of his previous ownership and not by any right of inheritance. Her son were allowed to intervene before her father, because the same feeling that secured her the permission to possess her property during her life would be extended to her sons on her death by looking upon her as a male member of the father's family to that extent. But even a man's daughters would not have been his heirs by the laws of Manu, and so the concession that was extended to such a woman's son would be withheld from her daughters and her father would step in as the head of her family in the absence of her sons. Such a distinction appears to have been the more likely if the sons of a daughter so married were bastardized in their natural father's family by the invalidity of the marriages of their mothers. That such bastardization must have been usual would appear from the exclusion of such sons from the whole enumeration of the twelve classes of sons of a man under the law. The only classes out of these twelve that refer to the issue of a man as born of his own wife and by himself are the Aurasa and the Súdriká-Suta. The last would not include the sons of higher class people. The Aurasa is, on the other hand, defined to be "procreated by a man himself on his own" Samskṛita field, *i. e.*, on his own wife who has been purified by the proper Samskára†. Kulluka adds, purified by the Viváha Samskáras or marriage ceremonies *while she is really a virgin*, and this qualification would be appropriate to the doctrine of Mitákshará which confines the devolution of a woman's non-technical strîdhana to her husband where she

* Manu, VIII, 416. † Manu, IX, 166.

NATIONAL ARCHIVES OF INDIA

was married in one of the ceremonial forms, and whose definition of an Aurasa-son is "born of a Dharma-patnî," *i. e.*, of a wife by Dharma,* whereas the Gándharva form was Adharmya in a sense. But if Manu's meaning of an Aurasa son were to be identical, the son of a Gándharva wedding would be excluded by him from inheritance to his father, while the father would be entitled to inherit such a son's mother's non-technical strîidhana under the express text of Manu, IV, 196, as the next heir after such son. The anomaly or inconsistency really arises from Manu's use of the word "Samskṛita" wife in his definition of an Aurasa. But "Samskṛita" need not be purified by Samskáras or ceremonies during her virgin condition, as Kulluka fancies; Manu's words imply no such limitation, and it is quite consistent to suppose that a maiden whose virginity had been ended by the Gándharva form might be purified with Samskáras even after the rupture of the hymen. The reader of the great drama "The Śakuntalá" will call to his mind the purification of the pregnant wife of King Dushyanta by the sage Káśypa taking her alone round the sacred altar and blessing her with the no useless words, "May these Vaitána fires *purify* thee."† The marriage in this case was in every sense a fully Gándharva marriage completed by intercourse before the sage knew of it and before he confounded its procedure with purifying ceremonies in honour of Prajápati; and it was the son of this marriage of a mother so Samskṛita or purified that inherited his father's empire and became the famous King Bharata who gave his name to this country. Manu's definition of an Aurasa son, with the relevancy and full significance of each word used in that definition, will now not only be intelligible but will also

* Yájñavalkya, II, 128.

† Kálidasa's Śakuntalá, Act IV, verse 8.

NATIONAL ARCHIVES OF INDIA

show that all the five forms of marriages which are mentioned by him and in which was the bride a consenting party in those times and in which her legal guardian added his purifying ceremonies by way of ratifications, had come to be legal and valid in his time and for a long time after to all intents and purposes, while the three remaining forms were not only not legal but entitled bastardization of issue so far as can be seen. Popular parlance had been calling these three forms by the name of marriages, and learned men had been even preferring for some communities with a spirit of chivalry. Unable to gag them, Manu deprived the forms of every shadow of a legal or moral matrimonium.

8. The expressions, approved and unapproved or disapproved forms, have never been used by any of the Samskṛita writers in the exact sense and connections in which they have been used in our English law books. These writers have contented themselves with mentioning the forms by their names only without any attributes, and with grouping them by these names in giving or distinguishing the rules for devolution held appropriate in the opinion of each of them, and their only attempts at classifying them according to their attributes have not gone beyond the length explained in this paper. The terms might be convenient in these days if more than two forms were recognised; but when we recognise only the Bráhma and the Ásura forms only for all practical purposes, it can hardly be pleaded as a necessity of the case that each unit of this pair should have a separate class of name for itself when there is neither a class in the case nor a case for such names.

9. The eight forms of marriage recognised by the ancients may not be seen in quite a different light from the one presented by speculations from foreign and general

NATIONAL ARCHIVES OF INDIA

analogies. We have used the term Indo-Aryan to represent the Aryans who immigrated into India with the Vedic poets among them. They, as shown, present no evidence of having had eight or even any *form* of marriage in the sense understood in later days. The other races through whom they passed had ways of marrying quite different from theirs, and as the two sets of races began to live together, the Indo-Aryans got infected with their ways. Out of the infection sprang forth the four non-Aryan forms, unaccompanied in the first instance either by ceremonies and rituals or by the most rudimentary of covenants, or anything sacred or solemn in even a civil law fashion for an occasion like the union of two souls such as the Aryan marriages implied. Three out of four of these went the length of treating woman as worse than a chattel, and sold or bartered and annexed the marital tie to her physical union even where it amounted to her open or secret violation. Far different in nature were the simple but elevating accompaniments of the Vedic nuptials. As the non-Aryan forms were absorbed by some of the elements of the incoming Aryans, the higher sense of their thinkers began to ameliorate and soften the barbarousness of what may, as distinguished from ceremonies, be called the "procedures" of these forms and to give them that graded recognition in law which has been described above on a principle resembling that of the occupation of *res nullius* or of purchased property. Three of these four forms were given an operation by the *jus gentium* and ranked by Manu like the concubinage of Roman law; while the fourth the Gándharva, was given a more respectable reception, such as the Romans gave to the marriages by *Usus*, though for the simple but great reason—a reason higher than that which had secured recognition to the *Usus* that the right of woman to be heard and to select the partner to whom

NATIONAL ARCHIVES OF INDIA

she would will away the rest of her life, was of the essence of it. *Consensus, non-concubitus* was more applicable to this form than to the Usus with its limitations and conditions. *Facit matrimonium* seems to have been the reason for this course and in applying it to the facts of popular life, the Indo-Aryans seem to have been less prudish than Mr. Mayne has been in his interpretation of them* and more logical than their tribesmen at Rome. There was at least a consistency in the reception of this form and to assimilate it with the Aryan ways of marrying, a way of purifying the bride by rites which her legal guardian alone could supplement it with, was devised to ratify the complete marriage and to give it an Aryan phase and a compound form so as to enable it to stand in the society of the four Indo-Aryan or ceremonial form whose independent development had already been in progress by its own strength and may now be traced. It is this development that marks the rise of the Brahmanical schools as distinguished from the earlier Indo-Aryan elements and institutions, the former having developed a system of life peculiar to themselves, while the latter were the direct outcome of what may be called the common ovaries which moulded the minds of all sections of the Aryans † before they parted from their unascertained mother-country to branch off to the south-east and to west at different periods of what some scholars of oriental antiquities have chosen to call the Proto-Aryan Age. How out of the Vedic solemnities of nuptials and simultaneously with or even prior to the development of the non-Aryan forms among Indo-Aryan races, the Brahmanical forms

* See the unfavourable comments in his work against the Madras Courts view of the Gándharva, accompanied with nuptial rites in Brindavan *v.* Radhamani, I. L. R., 12, Mad. 72.

† See this point briefly touched in paras. 28 and 29.

NATIONAL ARCHIVES OF INDIA

and ceremonies blossomed forth by their own original virility with new colours as over a plant or creepers, is a question which cannot now be understood or answered with any approach to the fulness it deserves. All that can be said is that we are not wanting in clues.

10. Manu, the law-giver, flourished later than the age of the Vedas. He wrote language and ideas which are later than the Vedas. The Vedic religion included the worship of Fire in a large sense and in various forms. For our purpose it is enough to note that the Vedic Ṛishis lighted their sacred fires both in their houses and outside their houses, and in later times at least these acquired the names of Gṛihya (domestic) and Vaitána or Vaitánika (extended) fires, respectfully.

The Vaitánika fires were the three sacrificial fires and are the subject matter of the Śrauta or Vedic sútras. The rites in their honour are performed by Bráhmaṇas or priests on behalf of the Yajamána or sacrificer, who took little or no part in them. The Gṛihya sútras have the domestic ritual for their subject and attempt to systematise the observances of daily life for a man and his family from birth to death. The domestic fire was required by these, as contrasted with the three sacrificial or Vaitánika fires. The house holder's sacred duties under this ritual are summed up in the word: The "Pancha Maháyajñas" or the Five Great Sacrifices. These include the Brahmayajña or the sacrifice to Brahma and the Devayajña or the sacrifice to the gods (Devas). A general view of the subject can be had from Chapter IV of MacDonell's Sanskrit Literature: "Vitána is an extension of fires. The rites there performed are Vaitánika. The fire for the purpose of one's home "or Gṛiha is Gṛihya, and the rites there performed are by "metonymy called the Gṛihyas. The word Gṛiha means

NATIONAL ARCHIVES OF INDIA

"both a wife and a house. . . . . When this word is "used in connection with those from whom these domestic "(Gṛihya) rites emanate on the fire generated by their union "with their wives, the word Gṛiha means their wives. When "the fire is generated for men at the time of dividing the "inheritance, the word Gṛiha used in connection with them "means their house."* The recipients of "cooked" offeringsat the domestic rituals are "Fire, non-Fire, and the Bráhmaṇas," and what is duly offered to any of the three serves as an offering to Brahma. † "Bráhmaṇaship" is acquired by means of the Samskáras received by means of the Pákayajña sacrifices where these are offered ‡ to propitiate Brahma. But there seem to be also other objects of propitiation by means of domestic rites. Thus, in a chapter on seasonal rites as distinguished from daily ones, a man who has finished his first Āśrama or student stage of life and has become Samávṛitta, *i. e.*, has passed into the next or married and Gṛihastha stage is asked to visit her during the "seasons" prescribed for this, in order that Prajápati's favour may be acquired by getting Prajá or issue. § Oblations at the domestic sacrifices are also offered to gratify the Vedic Devtás or deities, the Ācháryas, the Ṛishis, and the Manes, the Devatás, including Prajápati. ¶ An offering is offered by even the Áchárya of the Brahmachárí or celibate student to the Ṛishis. ‖ These references are given to illustrate and explain the meanings and positions of Brahma, Prajápati, Devatás and Ṛishi, who are also the objects of propitiation at the various ceremonial forms of marriages. By their help the following enunciations may now be offered and will at least be intelligible. The Prájápatya was the form to propitiate Prajápati, the Lord

* Gárgya Náráyaṇí Vṛitti on the Áśvaláyana Sútra: I, 1 (1). † *Ibid*, I, 1 (3). ‡ *Ibid*, I, 1 (2). § *I bid*, III, 5 (17 and 18). ¶ *Ibid*, III, 5 (21 and 22). ‖ *Ibid*, 22 (14).

NATIONAL ARCHIVES OF INDIA

of Creatures or of Descendants,* fulfilling our Indo-Aryan craving for legitimate issue as the object of marriage and may be looked upon as the most ancient of the forms having in view the one God of ancient nations irrespective of the Vedas and presenting for the object of marriage, not the animal lust which characterizes the non-Aryan forms, but the human and intellectual vision of future and legitimate issue and the abstract desire generated by such vision to propitiate the Lord by "living and multiplying" as in duty bound. Next comes the Daiva form circumscribing this abstraction and depriving it of its mundane character by looking to marriage as a mode of propitiating the Vedic Devas instead of the Deity, blessing man with issue. The abstraction is made still finer and subtler when it is not simply the Vedic Devas inspiring or, may be, representing the elements of visible Nature that are propitiated, but when the offering of the ceremony is Brahma. Instead of the visible Vaitána Agni of Fire which is the carrier of offerings to the Devas, the carriers of offerings to Brahman are defined to be Fire, non-Fire, and the Bràhmaṇas.† The Bráhma form is thus the highest abstraction and development of these three ceremonial forms and may also be taken to be the latest of the three. The propitiation of the Ṛishis by the Ārsha form is, no doubt, less self-centered than the Prájápatya. So far as the bridegroom is concerned, but it is not so as regards the father of the bride who as Ṛishi gets a pair of cows before he would be propitiated and persuaded to purify his daughter with the Samskāra of marriage and enable her issue to be the Aurasa child of his son-in-law. Ranked as one of the morally

* *Story of Nations Series*, Vedic India, pp. 245, 263. In other words he is the God who desires man "to live and multiply."

† Áśvaláyana Sútras, I, 1 (3), for Gṛihya as distinguished from Vaitána rites.

NATIONAL ARCHIVES OF INDIA

though not legally Adharmya forms by Manu, it may possess an independent history of its own. It may also have been the Ṛishi's imitation of the barbarian Ásura form, or it may have been a means of securing the retrospective consent or ratification of unwilling fathers of brides when they declined to show the good sense of Śakuntalá's guardian sage to spontaneously and voluntarily purify their daughters with the necessary rites. In either case its growth may be supposed to have been simultaneous with some unknown stage in the development of the other three forms.

11. We have already noted it* that the great marriage hymn of the Ṛigveda ended with joint prayers by the wedded couple, to Indra, the Viśvedevas, and Prajápati specifically. The prayer to Prajápati prayed for Prajá (issue). The Brahmanical development into the ceremonial forms seems to have deprived Indra of his prominence along with the Viśvedevas, and the Devas themselves were reached not directly as before but through the Ṛitvij-priest as bridegroom and as fitting medium for recommending to the Vedic Devas the people who prayed at the Daiva form, while Prajápati alone became the single angel of the Prájápatya form. The later writers have supposed and said that "Kanyádána," *i. e.*, the gift of the bride is an essential feature of all ceremonial forms. Now, whenever a Dána or gift takes place, all Dána ceremonies whether giving away daughters or property, pre-suppose a donor and a donee. And, in arguing why the Bráhma and the Daiva forms are confined to bridegrooms of the Bráhmaṇa community and are not opened to the other three Aryan communities, a commentator gives it as *his reason* that these latter three do not accept a gift or officiate as Ṛitvij.†

---

* Para. 3 of the text. † Gárgya Náráyaṇí I, 6 (1).

NATIONAL ARCHIVES OF INDIA

This implies the proposition that these other communities resorted to the remaining, *i. e.*, the Prájápatya and Ársha forms only, and does not deny that Bráhmaṇa bridegrooms might also resort to them. The Ársha, however, has expressly in view a Bráhmaṇa donor and lets in any one to be the donee, provided he can gratify the donor. The essence of at least the Prájápatya then, reserving the question of the Ársha, is that there is neither a donor nor a donee in the case,* that the bride and the bridegroom neither of whom need be Bráhamaṇa by birth, are themselves the real managers of the proceedings acting as *sui juris*, and the father of the bride only consents to their union. This is the only solution of that curious formula with which the father blesses the pair, saying "may they (two) perform their Dharma (duties) jointly"† and *not* "may *you* perform it jointly." The expression of a wish instead of an address to the pair is significant to show that the father did not give away his daughter as a chattel to a donee, nor allow her to be forced from his society in the sense in which English Common Law allowed damages to the fathers of seduced girls for their loss of the services and

* While "the donor and donee and gift" were absent as a fact in the Prájápatya, they would come under the genus "transferer and transferee and transfer" in the Ársha with this distinction that the transfer of the maiden would not be voluntary gifts but mere "givings" for some consideration in a form which was sinful neither to the donor Bráhmaṇa, nor to the Brahmanic donee. See further *infra* para. 22 on the subject.

† Manu, III, 30. Kulluka's commentary on this is erroneous and has misled translators. The original is "*Ubhau* tau charatám dharmam." Manu uses the verb "charatám." So does Yágñavalkya III, 60. Áśvaláyana uses "charatah." These are all third person, "charatah" being singular and "charatam" singular or dual. Its subject in Manu is "tau" (they two) and some read "nau" (we two) for "tau" which is an obvious error. Kulluka's meaning of the word is "yuvám," *i. e.*, you two.

NATIONAL ARCHIVES OF INDIA

society of their daughters. The formula in the *third* personal pronoun seems only to have been meant to emanate from the heart of the father and be heard or overheard by the wedding couple. This form whose essence then consisted in its not being a gift, was open to all Aryans as explained and must have been developed at the earliest stage out of the Vedic prayer for Prajápati, and at a time when the Bráhmaṇas could be bridegrooms to others as in the Daiva form and their daughters could be brides to others as in the Ársha form. The conditions which in these two forms must have predisposed society to the development of endogamous symptoms were entirely wanting in the Prájápatya, and there are materials to indicate that even the Śúdras used that form. "There is no transgression of the Śhástra, if a Bráhmaṇa married a Śúdra woman, for the marriage is entered into for the sake of Dharma-Prajápati."* Harihara after noting this proceeds to give the details of the ceremonies and formulas for use on marriages by Śúdra men and women after overruling those who assert that this community was absolutely debarred from ceremonial marriages. The author of the Párijáta in explaining this form says: "Even in the other forms the married couple are enjoined to perform their duties in life jointly. But this is so said specifically here, because it involves the Gṛiha Áśrama. The injunction extends to the prohibition of acquirings any other Áśrama, and, while she (wife) lives, he (the husband) is not to enter into (another) marriage or into another Áśrama (*i. e.*, the Vánaprastha or Samnyása). Let these two things be done after she is dead."† We have thus in this form not only no reference to even an embroynic

* Commentary of Harihara on the Páraskara Gṛihya Sútra, Chapter IV.

† The Párijáta quoted by the Samskára Bháskara (published by the Venkateś Press, Bombay), leaf 235.

NATIONAL ARCHIVES OF INDIA

condition of endogamy, but there is all this evidence to show that the form was one in vogue among all classes, and was reputed to involve a clear and positive principle of a strictly monogamous union dissoluble neither by resort to the ascetic stages usually prescribed for a Hindu's after life nor by the introduction of a co-wife. Its other name was Káya marriage according to the Mitakshará, that is, the union of Káyas or bodies not to be severed while the body of either partner was alive. Mr. Mandlik has had other reasons to think that monogamy was the rule and polygamy the exception in the Vedic age.* Those reasons standing alone are not convincing. But taken with these adjuncts for its foundation, the structure presents all that is necessary to raise a good presumption that the transition of the Indo-Aryan or Vedic age into the Brahmanic was associated with a non-endogamous, monogamous, and indissoluble form of marriage. There is also the fact that there is no good evidence except the uncertain applications of figurative myths to suggest the existence of a looser, barbarous, or retrograde condition of feminine position or social formations among the antecedents of this stage, while all that savours of that kind does bear the relation of consequences to such a condition of the environments through which the Indo-Aryans were pressing themselves. As regards the application of myths to show the state of Aryan Society itself, such as the inference of polyandry from the myth of the twin Aśvins marrying Súryá, it cannot be too much pressed upon the critic of the authors of figurative myths far removed from him not only in time and space but even far more in ways of thinking, expressing, and living, and removed to such extent as the ancient Indo-Aryans were from European savants of this age, that the safer and sounder way of understanding the former lies

* Hindu Law, p. 398.

NATIONAL ARCHIVES OF INDIA

for the latter in first noticing what these races have said directly about themselves without any rhetoric and figures of speech or flights of imaginations. Next in order but equal in importance, for the purpose of such understanding, stands what appear to be the feelings of their hearts when we find them expressed with intensity however direct or indirect. What is inconsistent or incongruous with the picture presented by information so derived and worked into a system, however incomplete, on these two matters, should be reserved for consideration after our patch-work is finished by fitting these pieces with pieces and leaving it to the future to suggest where the myths should be placed in the system so prepared. Having obtained from our more reliable materials a marriage system such as now appears to us to have existed among the Aryans who first crossed the Indus, it will hardly be worth our while to consider why their fancies led them to describe the gay forms and colours of the clouds and skies they saw in a language which is admittedly figurative, and then to fancy that these forms and colours so imagined must have corresponded with their almost unknown life and facts on the earth below even when the former are obviously inconsistent with what, however little, we know of the latter. These figures and myths may be useful, in the absence of evidence, to show clues to the whereabouts of evidence; but they ought not in sound common sense to be used further than that especially where there is clear and unequivocal evidence available, however small in quantity and insufficient to convince all kinds of men. It is by such discrimination that one feels bound, even while reading a single hymn like that of the wedding of the Aśvins with Súryá, to start with accepting only the proceedings and the feelings suggested by it and to shelve its obvious tropes for use by somebody no doubt but in quite a different direction. Starting from this hymn with this discrimination we have gone a long way

NATIONAL ARCHIVES OF INDIA

off to the clearly monogamous Prájápatya marriage, and can feel free to see the social progress of the Indo-Aryans from their simpler Vedic wedding to the growth of their ceremonial forms and through their shifts with the non-Aryan forms which were enveloping them.

12. That the Bráhma form was later than the Prájápatya and even than any other ceremonial forms, may be gathered from the facts mentioned in para. 10. The Prájápatya form was gone in honour of Prajápati, who, along with the Deva and the Ṛishis, received offerings on different occasions under the rites prescribed by the Gṛihya Sútras also, and they came in for their share of these offerings because what was offered to the one or the other of them was offered to "Fire," "Non-Fire," or to "Bráhmaṇas," the three carriers of all offerings to the more comprehensive and spiritual Brahma which is the final destination of all offerings prescribed by the Gṛihya Sútras. As the Gṛihya Sútras were later than the Śrauta or Vedic Sútras, so was Brahma a later conception than Prajápati, and Devas and Ṛishis who were all absorbed by it in this way. On the other hand we do not find that this larger and later concept had any status at the marriages in honour of these three recipients of offerings, as it ought not to have had if it was the latest of the four. The conception of the formation of an union between man and woman herself called Gṛiha—from whom the Gṛiha rites emanate on the fire generated by their union as the quotation in para. 17 describes, opened before the Brahmanic eye a vista of married life, whose beginning was also the starting point for that system of life-long, daily, and seasonal rites and sacrifices by the pair of its units, while the Gṛihya Sútras make it their object to unfold *in extenso*. On the other hand the *undefined* unpromised duties referred to by the peculiar

NATIONAL ARCHIVES OF INDIA

formula of the Prájápatya seem only to have been left to the capacities, inclinations, and aspirations of the pair to find out for themselves. Centuries must have rolled on before what was so left to the desertion and genius of marrying people must have formed itself into cut and dry grooves where married lives must run out themselves, so as to form precedents for others, and before the precedents could have ripened into the rigid system prescribed by the Gṛihya Sutras.

The Bráhma form was not only later than the Prájápatya, but that it also grew out of it and was evolved from it, seems pretty clear from the ceremonies now observed at the Bráhma which, as modern law so often repeats, is the only ceremonial form extant in the country. The bridegroom taking the bride by her right hand, as in the Vedic hymn of Súryá and Aśvins, repeats to her several of the verses of the very hymn and takes her round the marriage fire, and makes her ascend the stone that is symbolical of constancy. The stone is posted on the north of the fire. While he takes her by the hand, he offers to her his proposal for marriage, and in so doing among other things show his ideal of love and married life: "Look here, I am the "Sáma (of the Sáma Veda) and thou art the Ṛik (of the "Ṛig-Veda); I am the sky, and thou the earth: Such are "we both, and such only let us marry each other. We "both, very dear to each other, longing to shine, and "full of mental happiness (may we be)—seeing a hundred "Śarads (the season which is usually malarious in the "country and comes after the rains and precedes the winter)' "and living through them, etc., etc." Then he helps her to ascend the stone, and, while doing so, proposes to sing to her that soft and sacred ditty "into which what is was "born and in which all this world exists, and which is

NATIONAL ARCHIVES OF INDIA

"the best glory of womankind." The two then go round the fire from left to right, which, considering the relative positions of the stone and fire, would make them go to the north-west and return to the south-east. The fire is asked to bear the lady Súryá (of the Ṛig-Veda hymn) with them and to give the husband the wife and issue. This is the stage "where the married pair pass, they do so pass, between Brahma and Agni."* Then there is a ceremony in which the bride's brother takes some part. The bride and bridegroom then return to their first position so as to place themselves in front of the fire. The bridegroom then begins " the Prájápatya offering after the Bráhma one." The Saptapadí now begins with the bridegroom taking the bride *seven* steps (Padas) to the *north* on the northern side of the fire. Seven heaps of grain, called the *seven* Achalas (*i. e.*, mountains), are arranged at a cubit's distance from each other, the first of these being at that distance from the sacred altar. The first heap is to the *north* of the altar, and the second and each next heap is placed to the north of the heap preceding it. The bridegroom then worships these seven hills by repeating the time and place where they are standing telling the bride with a sacred verse that they are pacing forth together. "Thou steppest forth and so do I in front of thee. Thou followest me, and I follow thee. Thou art going along with me, and so am I with thee. Thou art Light and (I am taking) thee to Light." The bride advances one pace northward with her right foot while she hears each such verse. And the verse at the last step is a call from the bridegroom to the bride: "Friend! Finish thy seventh step! etc. etc." Some authorities make the bride answer her consort's first call and at each one of the seven paces

* Cited by the Editor of the Samskára Kaustubha from Reṇu Dikshita.

NATIONAL ARCHIVES OF INDIA

enters into a covenant with the husband, and these covenants include acceptance of the proposals made by the husband. She is made in these covenants to admit that she accepts him with eyes fully open to the circumstances of his family and purse, and promises to share with him his blessings and his difficulties, to obey his orders, to share his bed at proper times, to protect his family including the infants and the old, to be faithful to his bed, and to associate with him in the performances of all religious and worldly duties. Her covenant at the sixth step consists of an admission that the love of both of them is completed as she says to the bridegroom: "Vishnu be our witness that I am really not deceived by thee!"

13. These are such of the ceremonies according to the Samskára Bháskara* as are enough for us to know. The prayers of the Vedic hymn to Prajápati are here repeated and offerings to this deity are made next after those to Brahma. The Vedic hymn neither mentions nor implies the Saptapadís and even Manu has not a word for it, for the references given by English writers turn out to show only a mention by his commentator Kulluka. Prajápati who forms a member of a bench of three god-heads in the hymn and is the sole monopolist and deity of the Prájápatya has got into only a subsidiary position in this ritual. The hymn breathes a spirit of equality between the wedded pair and makes the husband ask his new partner to be Samrajî (empress) over her father-in-law and mother-in-law and the juniors, and the Brahma adds something of the sublime to this spirit of chivalry. Unlike the English expressions, "father and mother," "husband and wife," the ritual in Samskṛita language itself whether Vedic or classical,

* Published by the Venkateś Press, Bombay, leaves 235' 262-265.

NATIONAL ARCHIVES OF INDIA

always give precedence to the lady in their expressions and speak of "mother and father" or "Mátápitarau," "wife and husband" or "Dampatî," and "bride and bridegroom" or "Vadhû-varau." Consistently with this precedence the ritual compares the bride to the elder of ancient and more revered Ṛik of the Ṛig-Veda, and the bridegroom to the younger and inspiring "Sáma." The symbolism of the "seven of the *seven* hills" is not difficult to understand. They are placed to the north of the fire and the decendants of the children of the land of the "seven rivers"—the land of gods and Ṛishis—have a charm for the *seven* table-lands intervening between these seven rivers even after they have migrated southwards. Their love begins with a joint journey from the southern homes of the post-Vedic Aryans to the north-west where the rivers and seven hills of their ancestors are situated and ends by return after perambulation to the south-east. And during this journey "where the lovers go, Brahma and Agni (fire) attend them," and this Brahma is the spirit divine which as shown in another place receives offerings "through fire, through non-fire, and through the Bráhmaṇas." * The man has thus taken the woman by her hand and both have gone together through all this beautiful, sacred, and ancestral region of rivers and mountains, and none but the spiritual Brahma and sacred fire have attended them through their peregrinations. None has disturbed their confidential talks and none has witnessed the sacred verses and solemn pledges, whispered by each to the other, nor the earnest prayers to the Vedic duties—powers of nature—

* Sadáchára or correct conduct is described by Manu to be that which was observed by the residents of this country which the gods had created, and which lay between the Sarasvatî and the Ḍṛishadvatî Rivers. This conduct was handed down from generation to generation and was as essential a part of Dharma and study as the Vedas and the Smṛiti themselves. Manu, II, 1, 12, 17, 18.

NATIONAL ARCHIVES OF INDIA

offered by the lovers. The spiritual and ever-present Brahma and Agni have been "present on either side of the pair," as the only witnesses to all this life and living of the two; and the consummation of the whole pacing and stepping of the two over the seven-fold table-lands, in front of each other, after each other, and along with each other, has lain in their discovery that she is "light" and is taken to "light" as one of the quotations above given says. And at the end of the seventh and last journey, the wife is recognised to have fully become the "friend" of the husband before Brahma, before Agni, before gods, and before Prajápati, such friend—as lightsome Sûryá had become to her dear Aśvins in the beautiful old days. Such is the Bráhma Marriage, such its ideal, and such its realization. We have not to probe through any mystic figures of speech or flights of fancy to understand this situation. We have not to strain our minds to see what is in front of the symbol and what is behind it. The symbol here does not, as is usual, consist in drawing a veil over a reality so as to compel us to exert ourselves to tear off the former before we could see the latter. The symbol here is of an inverted type. The reality here is a life preserved in express and clear words in spite of past ages, without a veil of any kind. The only symbol lies in the fact that the words are repeated at the marriages of the children of modern Hindus in a language not known to them, and on the assumption that it applies to them when they can apply to them in no sense other than that of words addressed in a comical pantomime. We have only to understand the whole ceremony as being not a meaningless ceremony, but an opera of events in which the geography, topography, and the parties to marriage are the very ones which the natural meaning of the language of the ceremonial signifies instead of their being heaps of grain to cross, children to marry, unknown languages and words to be uttered without heart in

NATIONAL ARCHIVES OF INDIA

the case. This is not a difficult point of construction and interpretation, but a device, a shift, to read an original through its parody. It only requires us to set into working order an ancient phonograph and to make its inanimate machine speak out what was recorded there by living hearts ages ago.

The Bráhma form with this procedure was neither a day's meaningless ceremony such as the symbolism of modern ceremonies have now contracted into, nor like the Prájápatya form, a simple compound of a transaction between bride and bridegroom accompanied with Vedic prayers and other ceremonies not known to us, but not likely to have consisted of more than some simpler but significant purification of the pair by the Vaitánika fire and blessings from the heart of the bride's father. The peregrinations of the wedding pair among the Seven Hills where the bridegroom takes the bride by her hand and opens or pours his heart and pledges his word and life before they enter his house, seems to have extended over a more or less prolonged period of courtship and intimacy constituting an initiatory stage before final marriage. And this period and perhaps even a term after the completion of the marriage were to be a time during which the pair were to control their senses and to lead a life of sacred abstemiousness and celibacy (beginning with the Viváha). The pair were to take saltless food, to observe Brahmacharya (celibacy) and to sleep on the floor only for three or twelve nights or for a whole year if they wanted a Ṛishi for their son."* The life that was to be led during the ante-nuptial peregrinations with Brahma and Agni (fire) on either side of "the pair wherever they went" would *a fortiori* be such, the Viváha or marriage not being complete until at the seventh or the last step of the Supta-padí, the bridegroom pronounced to be his "friend." This period seems to have been a development of what the Vedic hymn referred to as courtship expressed by

* Áśvaláyaníya Sûtras.

NATIONAL ARCHIVES OF INDIA

the root "Van."* The object of a marriage attended with these austerities was, again, to secure less of the nature of a life of personal fruition than of a life of daily and seasonal duties up to death wherein longevity, fruition, and all personal ends were allowed to be sought but only as so many means for the performance of these duties.† That a form so complicate in machinery, so difficult as an ordeal, and so high in ideal, must have been by its very nature the last of the ceremonial forms in point of history and the highest in point of rank, seems as certain as it is intelligible. That the Prájápatya was earlier than the Bráhma, in the logical conclusion of the premises that the former is expressly included in the latter, and that the latter has no bearing upon nor is referred to in connetion with the former or with the Ársha and Daiva forms. Why this Bráhma form should also have come to be the special property of the Bráhmaṇa who alone were the community able by their mental and moral calibre to be equal to the conditions of the form, is now too patent to be worth discussing. Nor does it require a stretch of the imagination to feel that a form having a tendency to be so confined, must have found favour with the spirit of endogamy which was being ushered in by other causes. But it is important to note on the other side, that the donee of the bride in the case is to be only a "man learned in the Vedas," and such a man *any* individual of the three regenerate classes could be. This suggests that the form must have become at one time confined to the Bráhmaṇas by the slow course of events and not by any sudden religious ordinance of the Bráhmaṇas and that the relaxations of its strictness must have similarly brought about the re-extension of the form to the other classes. It would appear also that prior to this relaxation the form must have been a monogamous one. As it was

---

* Supra para. 3. † Supra para 19.

NATIONAL ARCHIVES OF INDIA

superior to the Prájápatya in all its known exaction. The growth of endogamy, the dwindling of covenants, pledges, and living activities into symbolical ceremonies, and the slowing relaxation of the age that followed, must have favoured the supersession of the older and lustier ceremonial forms by a transformation of the old Bráhma as also the application and extention of it as the only surviving Aryan form to polygamous marriages which must have remained, side by side with this form, among them as fossil remains of the last interfusion of Aryan and non-Aryan institutions. At the same time the realities of the Bráhma reduced into a time-honoured smudge of ceremonies cherished as mementos of a revered past and suited to inspire religious awe among the parties concerned, must have made the form fit in with the old and new shades of opinions.

15. The connection between the four forms may be noticed in another way, "where the bride is decked and given to the Ṛitvij priest at the Vitata ritual, *i. e.*, at the sacrifice to Vaitána fire, the form is Daiva."* The selection of the Ṛitvij out of the various priests has no importance for us. It is enough to know that he is chosen as a medium between the gods and the bride's father whose offerings to the former pass to them through this particular priest. The priest is a medium for the purpose like a conductor of eletricity in modern science. The Brahmanic caste need not be charged with partiality to themselves in this form; for the institution of Ṛitvij was probably in existence prior to the evolution of that caste as an endogamous body or even of the institution which eventually matured into Brahmanism. The decking of the bride and making a gift of her are common features of this form and the Bráhma, while the Vaitána fire connected with it seems

* Áśvaláyaṇíya Sutra, I, 6.

NATIONAL ARCHIVES OF INDIA

to be identical with the fire that purified Śakuntalá.* And in her case Prajápati was said to have duly acquitted himself "by bringing together bride and bridegroom of equal merits." † Prajápati and the Vaitána fire, so associated at Śakuntalá's marriage, however faint and remote the association may appear, seem to have been there related mutually as the Devas were connected with the same fire at the Daiva marriage, and this circumstance of being connected with the same fire suggests that the Daiva form was a nearer offshoot of the Prájápatya form (which was the earliest) than the Bráhma which was similarly connected with the Gṛihya fire. The "gift" of the maiden by her father in the Deva form need not deter us from accepting this suggestion or from excluding the idea of the free will of the bride and bridegroom as originators of the marriage. The elements of her free will existed in the earlier Prájápatya and in the still earliest Vedic marriage and more clearly so in the latest development of the two in the Bráhma form, and this could not possibly have disappeared from the Daiva form which now seems to be historically intermediate between the two. The Ṛitvij having won the heart of his Yajamána's daughter and being dependent upon him for his services, would be the last person to venture to elope with her or to omit seeking her father's consent. The father in consenting to or ratifying the match would naturally "deck" his daughter with her ornaments and allow her to pass into her spouse's hand. The ornaments on her body would be evidence to show that his consent was more than a mere bowing to the inevitable, the Ṛitvij would, by usual habit of accepting gifts from his

* Para. 14 supra.

† Śakuntalá, Act V, verse 15. The fire at the Prájápatya form seems thus to have been Vaitána like the fire at the Daiva, while the Gṛihya is the fire for the Bráhma.

NATIONAL ARCHIVES OF INDIA

father-in-law Yajamána accept the ornaments on the bride's person without a feeling of degradation, and the idea of the gift of the ornaments would, in course of time, associate itself with their wearer and develop itself into the idea of Kanyádána, a "Gift of the Maiden" that wore them and the receipt of the new idea would not grate upon the ears of the community, familiarised with the growth of the non-Aryan Ásura form which looked upon the daughter as a chattel to be transferred by sale—and, if by sale, why not by gift? That the idea of the gift of the daughter and her ornaments should pass on from the Daiva to the Bráhma form would seem to be a natural sequel of associations not incompatible with the rigid purity of the Bráhma when we consider what we have taken to be the original features of the gifts. That the Ṛishi father of the bride at the Ársha should make a gift of the girl in the same sense, *i. e.*, in the sense of ratifying a past match with ceremonies of giving to their wills full legal operation and effect by his attestation in this way, that he should require two cows to be persuaded to do so if not as damages for loss of her society as in English common law, that a man of this nature should omit the "decking" of the bride, and that Manu should look upon this form as not morally proper, are points now intelligible and seem to correspond with facts. That Manu should define the Prájápatya as "Gift of the Bride" and that Áśvaláyana's commentator* should not include it among the forms constituted by such a gift, would be reconcilable points if we can feel that in Manu's time the gift was a legal fiction obvious from the formula used at it (supra para. 18), as also at the other forms in one uniform sense and was a name

* Chapter VI says that "gifts" which are the basis of this form cannot be accepted by non-Bráhmaṇas, implies that it is not the basis of other forms. See also supra para. 18.

NATIONAL ARCHIVES OF INDIA

for a mere consent *ex post facto*, known to be such, while, in the time of the other writers, the function of the father had come to be looked upon as being in two at least of the forms that of one actually giving his daughter though as a matter of a religious duty to her, and while the words "Gift of the Maiden" had come to be connected with a donor and a donee in fact for such an object, and the nature of the old fiction being forgotten, the word "gift" without its fiction could not be applied to the Prájápatya. At the same time the distinction between two forms confined to Bráhmaṇa donees and two forms not so confined which seemed sufficiently explained by the character of the bridegrooms in the formal case, must have been an actual distinction in practice to require being explained and the whole must have filled in with the explanation given. The present of kine by non-Brahmanic bridegrooms who would not receive even "bride" as "gifts" from Bráhmaṇa fathers-in-law, must have satisfied the consciences and sentiments of the former at Ársha forms by turning these "gifts" into exchanges for value. This explanation, though plausible and fair, is not applicable to previous times, and while we have accepted the distinction made by Áśvaláyana's commentator as giving a clue to the history of the forms, we have sought out explanation from a larger group of facts as above. The enunciations with which we started our inquiry were set forth in para. 17 supra. We there assumed on the strength of a smaller group of facts that the Indo-Aryans must have risen from the Vedic marriage to the Prájápatya, from the Prájápatya to the Daiva, and from the Daiva to the Bráhma as the highest abstraction of the purpose of marriage. Of the Ársha we were only able to predicate that it might have been borrowed from the Ásura or it might have been an inducement to aggrieved fathers for ratifying the proceedings of their daughters. We are now able to say by a review of fuller evidence that the latter

NATIONAL ARCHIVES OF INDIA

theory about the Ársha is the probable one, that the other forms of marriage were evolved, one from the other, in the above order, and that the Ársha was an independent off-shoot of the Prájápatya and Daiva forms and emanated from a lower order of Brahmanic mould. "The gift of the bride" is an idea which now associates itself with all Hindu marriages, but we have seen that it was in its inception a mere legal and religious fiction and, in none of the forms, had any connection either with the idea of the girl being given away as a chattel to the bridegroom, or even with the idea of its forming her emancipation from the *patria potestas* of her father in the sense that the freedom of her mind in selecting her partner was in any way subject to control or revision by her father. She was no doubt emancipated from her duties to her father and subjected to duties to her own new home as its mistress, but that seems to have been her right as a matter of course and was her father's duty as soon as the resolve of her own mind was known. The formula of the father in the Prájápatya form and the other circumstances discussed, lead to this conclusion only. The absence of the father's consent would have, as shown, not come in the way of her free marriage at all, but would only have affected the status of her children and especially her sons in that they could not become the Aurasa children of their father unless their mother had been purified with Samskáras. The shadow of the *patria potestas* haunted her to this extent only and no more; and as to whether that was the result of pre-Vedic Aryan usages or of the surrounding non-Aryan usages, there are not enough materials to show. While her father's permission in the Vedic hymn saying: "I release thee here but not there,"* points to the former suggestion, the origin of the Kanyádána from the position of the Ṛitvij confronts us with an origin of the gift theory which reduces

* Ṛigveda, X, 85 (25).

NATIONAL ARCHIVES OF INDIA

the nature of the father's consent to an act sought more in the interest of the bridegroom than of the bride, and in view of the services of the Ṛitvij than of the necessity of emancipating the bride from her father's control. In this last case there would be no association with the *patria potestas*. All that can be said under the circumstances is that a marriage without such consent and emancipation would not have been accompanied with purification, and that, while the marriage would have been valid as being of mere Gándharva form, its issue would not have been Aurasa as defined by Manu. It does not, however, appear to have been expressly laid down that such a son would not have shared at a partition of the paternal property, though his right to inherit property left by his mother might have been subject to the distinction we have already discussed.*

16. Words looking insignificant turn out at times by the light of fuller knowledge to possess an unexpected significance. Manu in defining the forms in the third chapter of his Smṛiti has wound up each definition with calling some of the forms "Dharma," some "Vidhi," and so on. The Bráhma, the Daiva, the Ársha, and the Ásura forms are each defined as being a Dharma possessing the other properties enumerated in its respective definition, while Prájápatya and Rákshasa forms are called Vidhis. We have shown in para. 7 that Dharmya in verse 23 of that chapter means "permissible at law" in the opinion of the people. Dharma as a noun used in a cognate sense would seem to have some meaning if the four forms of which it is predicated were considered to have been Dharmas on the ground that they were associated with the *direct* "permission" or consent of the bride's father and with her gift by him in the sense discussed. Such consent and gift would constitute their "permissibility" in the eyes of

* Supra, paras.. 13 and 14.

NATIONAL ARCHIVES OF INDIA

ordinary people and fathers. The Prájápatya and Rákshasa forms are called Vidhis. A "Vidhi" means in ordinary literature a mere method, proceeding or procedure, without any reference to free will or forced will. The Rákshasa form — constituted by force and capture of the girl — would be an obvious Vidhi in this sense, and so would be the Prájápatya if we could view it as a proceeding between the wedding pair with only an after-blessing from the heart of the father of the bride not addressed to them, but uttered about them or even behind their back in the third personal pronoun only.* The Gándharva is called, neither a Dharma nor a Vidhi, but only the "Samyoga" — the union itself — the "promise *cum copula*" of the Scottish law — without any preliminary proceeding between the parties or permission from others to leave the Samyoga to be the result and not the bond itself of the marriage.† Paiśácha is on the other hand given none of these attributes, but is called "the most sinful and degrading one of the marriages." Such is the classification deducible from the predicates of Manu's own definitions‡ and by the light of what we have already tried to know of the forms, is not only intelligible but is more precise and concise from a logical stand point than what we have attempted, and corroborates our view of the leading points of the subject. Our attempt has been necessarily of the nature of a historical disquisition, and the value of the above logical classification lies in its power to harmonize and concentrate what had the appearance of a diffuse and methodless mass of information. This value can be illustrated by an example. The connection between

---

* Supra, para. 18.

† The quotations in the Introductory Extracts would show that in Áśvaláyana's time this form had assumed the form of a mere civil pact.

‡ Manu, III. 27—34.

NATIONAL ARCHIVES OF INDIA

the eight ancient forms of marriage and those recognised by modern law may be now expressed in terms of the above classes in the following way. Modern Hindu law has entirely abjured the ancient Vidhis or mere procedures of marriage and repudiated the recogniton of the *vinculum juris*, or, more specially, the matrimonium between man and woman on the mere strength of a Samyoga, whether with or without the woman's consent, the Samyoga being intended to be the *result* of the *vinculum* and not the *vinculum* itself. It was on the other hand accepted so much of the ancient Dharma as depended upon the gift of the maiden as a fact and not a fiction and broadly recognised only two distinctions among these Dharmas, arising out of the gift being voluntary or for consideration, provided the gift was supplemented with only a symbolical representation of the ceremonies which in ancient times were essential to give legal validity to marriages and were looked upon as belonging to the Bráhma form. The ceremonies on the other hand are accompanied with a new fiction which assumes the child bride of riper age and repeats Mantras and verses upon that assumption, while the operative portions of the gift dispense with the fiction and proceed upon the basis of her being a child. This is the only definition that appears on a consideration of all circumstances and with all this diffuseness accurately apply to what modern Hindu law recognises to be a valid marriage. The reasons and circumstances whose progress led to this aspect of things are fitter matters for independent treatment. The above definition is attempted only to sum up the relations between a distant past with our living law. A gift of the child-maiden plus the husks of the Bráhma form in the shape of a fiction and looked upon as containing the sum of all that was essential in the ceremonial forms, are thus the two and only legal essentials of modern marriages, whether of the

NATIONAL ARCHIVES OF INDIA

Bráhma form or the Ásura in name, and the only distinction between the two forms themselves has been reduced to this that the Ásura form means the whole of the Bráhma in this fashion, *plus* some consideration to the bride's father as an a additional element in the case. In other respects the forms can hardly be distinguished from each other. The old names of the two forms are now borne by substances quite different from those that bore them in ancient days.

17. The vicissitudes of the eight forms of marriage in ancient times seem thus to have been the result of a double set of influences. The first set emanated from the relations of the Aryan and the non-Aryan races upon the advent of the former in the country among the latter who were the more ancient natives of the soil. The other set of influences originated among the Aryans themselves and were the direct results of their own intellectual, moral, and religious advances which has left such a deep and indelible impression upon the race that the lapse of ages and the influence of adversities that were prolonged, repeated, and overwhelming have not been able to pluck up their deep-seated roots. These roots at present have developed a fungus growth of ceremonies and can show no further life. The co-operation of these influences has not been traced out by historical research, and oriental scholars as well as students of ancient institutions seem hardly to have reached beyond the first stage of their exploitations. One can hardly wonder that Mr. Maine should have been put upon a false scent by the suggestion of foreign analogies drawn from the conditions of barbarians and that Sir Henry Maine should have told us the dull story of a stereotyped India, where in fact there has been no such thing.

The history of Indo-Aryan institutions will present at every point a congeries of startling changes from the base

NATIONAL ARCHIVES OF INDIA

to the top of every reef that will be selected for exploitation. The way in which we have found it practicable at the end of the last paragraph to contrast the marriage of the ancient Aryans with those of their present descendants is only an illustration of this remark to which we may add the following as being closely connected with the subject.

18. It is a well-known verse* in Sanskrit which says that a man is born a Śúdra and becomes "twice-born" by Samskára. In connection with this principle, the writers raise the question how a Bráhmaṇa's wife is to be considered twice-born and of her husband's caste as women do not receive Upanayana Samskára (the ceremonies connected with the investiture of the sacred thread). The answer is usually given that she receives the Viváha Samskára instead of the Upanayana†. The principle involved in this answer applies equally to the Śúdras if we note that they too are allowed‡ to have the Samskáras of some of the ceremonial forms of marriage. Even to this day every Śúdra caste of Aryan origin, including the Dheds and Bhangis of Gujarát, are associated as Yajamánas with one or two other priestly caste laying claim to Brahmanic descent, and to the right to officiate at the marriages of their constituents in supervising the ceremonies. The comparatively recent authorities¶ on the subject have laid it down that several of the Samskáras

---

* Janmaná jáyate Śùdrah, Samskárát dvija uchyate.

† *Vide* quotation from Kulláka in paragraph 14, supra. These answers would have been incorreet in Manu's time when maidens were not compelled to marry. It was only when maidens were compelled to marry at tender ages that their marriages became analogous to the Upanayana Samskára looked upon as necessary for every Bráhmaṇa boy. It seems from Parsee Institutions that the earlier Aryan woman was permitted to receive the latter Samskára.

‡ Supra, para. 18.

¶ Samskára Bháskara, leaves 2, 142.

NATIONAL ARCHIVES OF INDIA

are to be given to the Śúdras, but they are to be accompanied with quotations from the Puránas instead of Vedic books, and this distinction is observed in practice by changing the Vedic texts into classical and less Brahmanic forms. For instance, the bridegroom's words to the bride before the Saptapadi: "I am Sáma and thou art Ṛik; thou art earth and I am sky"* are drawn from the Vedic hymns; but these are cut down and changed† into the words: "May the sky give thee and the earth receive thee!" and placed in the address of the Śúdra bridegroom to the Śúdra bride. The expression so changed not only expresses a simile where the Vedic text had a metaphor, but the status of the bride placed by the rituals drawn from the Vedas on a footing of equality with the bridegroom such as is meant by the comparison of the wedding pair themselves to heaven and earth, is seriously lowered and affected by the Śúdric formula, when the bride is turned into a thing *given* by the sky and received by the earth she is no longer the self-disposing will-power as in the Vedic text, but is reduced into a matter for disposal by her father. This change does not seem to have been the exclusive misfortune of the Śúdra bride from times immemorial. The regenerate lady too was subjected to a fall from her Vedic position into that of the subject of a gift,‡ and the absence of evidence to show that the Śúdra bride did also at one time occupy the higher position and then fell from it, may be explained by assuming that no texts about her higher position can be forthcoming if during the age of the texts there was no distinction in the Śamskáras given to the regenerate and Śúdra communities at marriage, so as to necessitate special texts for Śúdras. The Śúdras may not have worn the sacred thread as the ladies of regenerate

* Supra, para. 19.

† Harihara on Páraskara Sútras, Chapter IV.

‡ Supra, para. 22.

NATIONAL ARCHIVES OF INDIA

classes did not, and both sacred thread and Upanayana may have been left to the option of those who wanted to go in for the life to which these Śamskáras would pledge them and may have been dispensed with in the case of women and men who wanted to lead a more secular life. Śúdraship by birth and Dvijaship by Samskára at the will of individual must have been facts of universal use to all units of the Aryan race in such days, and it was probably left to the later age of sharper caste distinctions to reduce these facts into fictions. The probable identity of some of the important marriage ceremonies for all Indo-Aryan races is suggestive of all this history.

19. The history of a nation's marriage laws is usually an index to the history of the position of its womankind. In the present case the Aryan wife's position in early times has more than once been shown to have been one of eminence and equality with her husband. The alteration of the Vedic text to suit the Śúdras as shown in the preceding paragraph marks a stage in her fall in that community. The addition of her promise "to obey" her husband to the older procedure of Saptapadi* marks a stage in her fall among the higher classes. The subject of her fall, and its causes, the way in which she fell, and an account of her losses and gains by that fall, would form a fitter subject for independent treatment. It is enough to note that non-Aryan institutions may safely be suspected and searched as having a hand in her further fall.

20. The monogamous character of the ceremonial forms and the non-endogamous nature of the Prájápatya at least have been already shown to have been probable. Polygamy seems to have been a non-Aryan institution which affected the Aryans at a very early date like a contagious

* Supra, para. 19.

NATIONAL ARCHIVES OF INDIA

disease. It seems to have found introduction into their system in the form of exceptions until the exceptions grew thicker in number and devoured the rule. The earlier polygamies are found among royal families only, there being no known indications of their adoption by Kshatriyas of humbler status as a rule, while the Brahmanic Ṛishis seem on the whole to have practised monogamy. The earlier myths of the Devas since their transformation from their Vedic character to the mythical are represented as having wives but there is no case known to this writer of any Deva having got more than one wife. The myths charge them with adultery but not with polygamy and Indra, the king of gods has been described as a frequent sinner in the former of the two ways, but had only one wife. So had Brahmá and Vishṇu in later days, though the third god Śiva is charged with having had a Bhil woman and the river Ganges for his second and third wives, and the Ganges in after times lived with an ancestor of the Kauravas and Bhishma, who was their first generalissimo in their great war, was born of that her second union. The marriage of the Ganges with Śiva is of course a figure of speech only and Śiva was not so much her husband as the recipient of the waters on his head. There was no further connection between the two. As regards the Bhil woman she is explained as being his own single wife in disguise. But his son Ganeśa had *many* wives, his polygamy is an exception among Devas, and he is the god whose worship is not only added to all modern marriages, but is always indispensable and often the first thing at the humblest crudest nuptials. The use of myths lies to us in their indicating the trend of the earliest ideas on the subject. All Devas or gods were monogamous, and the only gods who were in the case charged with a shadow of polygamy, and in the other admitted to be polygamous, were Śiva and his son. And Śiva was the only god who lavished his favours indiscriminately

NATIONAL ARCHIVES OF INDIA

upon Rákshasas and Asuras, and had the Piśáchas for his permanent body-guards. Modern mythologists have suspected that his worship had a non-Aryan origin. Zend and Vedic scholars have an idea that a section of the earliest Aryans were known as Devas, who had been at temporary war with the followers of Zoroaster. The Devas in that case would be the name of the earliest Aryan immigrants to India, and Indian mythology invests them with a monogamous character and only surrounds one of them, and this the latest of them, with a character dimly savouring of polygamy. The God who so formed such an exception and has become the central figure of modern marriages, has for his associates and admirers under his paternal roof the three non-Aryan tribes mentioned above, who have given their names to three of the non-ceremonial or non-Aryan forms of marriages. Indra and the body of his Devas had for their courtiers the Gándharvas who gave their name to the fourth non-Aryan form. The marriages of all the heroines of Kálidasa's plays including the Śakuntalá are polygamous, and seem to have been of the Gándharva type. The first Avatára or incarnations of the god Vishṇu were bachelors. Ráma was the first married Avatára who is adored because he always spoke " one word which never failed, shot one arrow which never missed its aim, and married only ' one wife ' to be his single and only wife through life." The next Avatára was Kṛishṇa who married thousands of wives whom powerful Asuras and Rákshasas had captured for marriage and who pined in prisons because they would not yield to the wishes of their captors. Kṛishṇa saved these captives from their prisons, and they married him and these marriages were in the Gándharva form so far as one is allowed to presume from the myth. Mythology then would support the view that the early Aryans were monogamous except where political relations with non-Aryans brought in polygamy ;

NATIONAL ARCHIVES OF INDIA

and then the Gándharva was probably the form restored to, and perhaps compounded with the Rákshasa form as Kṛishṇa's marriages were with the captives rescued by him, and we have noted that Manu considered such a compound marriage to be Dharmya.* These accounts, however mythological, are not meant to be figurative for all purposes, and may be used as affording a clue to the first ingraftment of polygamy upon the Indo-Aryan stock of races whose original institutions were monogamous. If the monogamous nature of the ceremonial forms at their inception be admitted, the above account of the introduction of polygamy among the Aryans by means of the non-Aryan forms of marriages may be tentatively accepted until a better explanation with some evidence to support it could be shown as forthcoming. That an institution of this kind should strike deeper roots among all sections of a race, whose ideal and object of marriage has ever been progeny, and especially male progeny, from the days of the prayers to Prajápati, would seem to be only a natural result. As intense religious craving for sons as attested by the legalization of the twelve kinds of sons under Hindu Law, has characterized this race, while the scope of this legalization seems to have grown more and more limited, until we could have no more than the Aurasa and adopted sons only. The limitation of this scope may have either been the cause of the growth of polygamy as being the only way left for answering the object of the craving in question, or it may have been the result of polygamy, as convenient and rendering the introduction of other people's sons into one's family unnecessary, or what is more probable, both events may have simultaneously acted and reacted upon each other as cause and effect. In any case it is enough for us to see that the polygamous aspect of modern Hindu

* Supra, para. 11.

NATIONAL ARCHIVES OF INDIA

Law seems to have had a non-Aryan origin and is distinguished from the polygamies of other races by a special feature of its object and aspiration. Whereas the polygamies of other races have usually originated in and been fostered by animal lust, the polygamy of the modern descendants of the ancient Indo-Aryans is differentiated from non-Aryan polygamy by that same higher ideal or craving which placed the object of their old Prájápatya marriage above the marriages of other races around them in the scale of aspirations, if not quite civilization, and that object is the attainment of the desire to leave to endow the surviving family with a male successor to the present incumbent of the office of *pater familias* in the image of that incumbent himself, a successor or son, born from the endower's " body and heart " as a Mantra puts it.

21. The subjects of the last three paragraphs are touched only cursorily, as, while it was proper to introduce them here on account of their relations with our main subject, full justice could not be done to them without independent investigation and separate treatment. These subjects afford a few of the many illustrations of the ways in which non-Aryan contact affected Aryan life in ancient India. They even throw sidelights on the reasons which must have made the higher ones among the Aryan minds recoil from the non-Aryan contact and create a safety-valve for their shuddering spirit by originating and developing those many forms of self-isolation which finally crystallized into the endogamous ramifications of the caste system. The subjects also afford fit matter for consideration by those who take an interest in noting the points for comparisons and contrast between the Aryans who came to India and the Aryans who went to Rome. The causes which introduced polygamy among the Indian Aryans did not exist at Rome, where people continued to be

NATIONAL ARCHIVES OF INDIA

monogamous from the beginning to the end. The patrician element began with haughty isolations from the plebians and yielded only to the mutinies of the latter, who exerted more than a merely moral force to be recognized the equals of their prouder townsmen. Rome in fact began with a sharp and severe distinction between her Dvijas and Śúdras, and the distinctions gave way in the end after an amount of heart-burning and quarrelling. The Aryans in India began their career without any such distinctions and barriers which rose in their midst in after times without any known remarkable quarrels and heart-burnings. Instead of seceding in order to have their rights as at Rome, the Indian plebians may be said to have allowed their patricians to secede in social matters and to have their own ways of puritan living and they themselves felt happy enough with their own ways of living under the non-Aryan influences. That spirit of seeking contentment, concert, and harmony by reciprocal separation has been the distinguishing feature of Indian cas tes, and that spirit gave peace to either party to this divorce. It is only the well-meaning modern Western mind that has been startled at the existence of such sections and, by confounding their unknown origin with the spirit which prevailed at Rome and elsewhere, has attributed to the pride, covetousness, and ambitions of higher castes splits whose origin lay in the different direction first indicated. The Romans thus began with ancient caste distinctions brought to Rome from their Aryan home-life and gave them up after breaking of heads. The Aryans in India came from their home without any such b eginnig and entered upon such distinction with cool heads The position of woman among the two has also followed inverse orders of development. At Rome she began with figuring as the Stoic *mater familias* and *alieni juris*, who was in the position of a daughter or slave to her husband as the head of the family, and she ended as a free woman

NATIONAL ARCHIVES OF INDIA

about the days when she also saw the end of the power of her Rome. In India she began her career as the "empress or ruler of her father-in-law and mother-in-law" * when the race to which she belonged was free and great, and ended it with being classed with her sons and slaves at law, the fall and burden of fetters upon her position having progressed in direct proportion to those upon her nation in later times. There is a clear contrast between the progress of her liberties in India and in Rome, and their only point of agreement lies in this that the nation which claimed to have brought her to this pass fell in India as well as the one which raised her at Rome.

22. So far we have found only points where contrast between the two nations has been more prominent than the points for comparison. The points on which there is room for comparison rather than for contrast, not only between Rome and India but also between primitive Societies and India are presented by the non-Aryan institutions of the latter. The Roman marriage by *usus*, which as pointed out in para. 16, differed in some essential features from the Gándharva form, has a parallel in the Aherio or probationary marriages of the Bhil tribes, who live in the forests between Khandesh and Rájpipla, with this difference that it is the husband and not the wife who passes three years or more under the roof of the latter's father. This stay is called Aherio, and, if the man does not turn out to be quite unfit, marriage is completed by the lapse of the period. It is also completed, if the woman is with child. If he turns out unfit and the last mentioned question does not arise, the man is turned out and there is no marriage. The "co-emptio" has a suggestive parallel in the Ásura form and in the kinds of marriages by exchange which were the subject of a decision in I. L. R. 17 Bomb. 400. The *confareatio* of

* Rigveda, X, 85 (46).

NATIONAL ARCHIVES OF INDIA

early Romę has a duplicate in a practice which prevails even in the highest Aryan castes in Gujarát. This practice consists of the ceremony of bride and bridegroom feeding each other with a small and defined number of morsels of particular varieties of food considered auspicious by their particular caste. Even a relic of the past and forgotten associations of the Rákshasa form—marriage by capture—will present itself to some ears when, in the midst of the jubilant marriage songs of the ladies of several high castes in Gujarát, upon the bride's first departure for the bridegroom's house after the first day's completion of ceremonies, the loud song bursts upon one's ears almost in a chorus from the ladies of the bride's party complaining in express words that a highway robber, meaning the bridegroom himself has forcibly abducted their precious dearest daughter, while the party for the other side begins their homeward return singing at the top of their voices, "Bravo! we have carried the fort of Idar!" The last scene is usually one where the bride's party are actually moved into tears at the mental realization of the idea that this is the moment when their moral and legal control over their daughter's destinies has passed into the hands of her father-in-law's family for good or for evil, and when their own right and power to look after her good fortune and save her from adversities has become a matter of sufferance at the mercy of the other side.* To the ordinary mind not aware of the possibility of a Rákshasa form among human beings, the songs are figurative only while to the families of the parties there is neither occasion nor room for historical associations or poetical interpretations, but the moment presents itself as solely one of all-absorbing and

* Among the lower castes, women of either party attack each other with obscene abuses converted into songs and seem to simulate as it were the quarrels likely to have attended the non-Aryan forms of criminal types.

NATIONAL ARCHIVES OF INDIA

intense personal feeling such as the realization of the practical significance of the *traditio in manum* must bring home to the hearts of affectionate parents. None of these matters, neither the songs nor the reciprocal feeling of bride and bridegroom have anything to do with the ceremonial forms or with the Brahmanical Śástras on the subject. These are disposed of by Áśvaláyana * with the Sútra. "The Dharmas (ceremonies) prevalent in the country and the villages (or towns) are high and low; one should recognise them at marriages." This is something like the language of that old statute which made it the duty of Indian judges to give effect to the usages of the Gentiles of India according to justice, equity, and good conscience. The ceremonies recognized in such general terms by this sacred text are variable, though often not varied at the wills of men and women according to their tastes and fancies. They involve an amount of symbolism often mute and at times outspoken. But they are not allowed to have the slightest independent force, and can neither constitute by their presence, nor impair by their absence, the formation and completion of the matrimonial tie. Nonetheless, they are very ancient and must have been preserved and handed down in stereotyped form as mementos from the days of non-Aryan neighbourhood, if not infection in practical matters. They find no mention in the Samskṛita books, and so must have been borrowed from these neighbours. That these matters which cannot be traced to any Indo-Aryan origin, to things that exist at Rome or among primitive societies in the manner indicated, may afford food for reflexion and research to the student of antiquity and anthropology. To English writers on Hindu Law, who rush into speculative conclusions from foreign analogies, they might only serve as reasons for reconsidering their situation and altering their methods of research and judgment.

* Áśvalayániya Gṛihya Sútra, I, 7 (1).

NATIONAL ARCHIVES OF INDIA

INDEX.

Áherio, 94.
Alieni Juris, 93.
Aṅgada, 23.
Apsaras, 7.
Ársha, 6, 15, 19, 21; 35, 37, 52, 53, 63. 65. 79, 80.
Áśramas, 66.
Aśvins 5, 31, 58, 70.
Ásura, 7. 9, 15, 16, 21, 26, 37, 49, 51, 63, 85, 94.
Áśvaláyana, 1, 17, 19, 29, 32, 38, 96.
Auras, 27. 56, 57, 63, 81.

Bhágavata Puráṇa, 25.
Bharata, 57.
Bhíma, 89.
Bhishma, 89.
Brahma, 39.
Bráhma, 19, 39, 53. 63, 69, 70, 84, 85.
Brahmacharya, 39, 44, 75.
Bráhmaṇas, 15, 20, 32, 40, 46, 52, 69, 89.
Brahmanic Ideal, 36, 39, 46.
„ Abuse of, 38.
Brahmanism, 33.
Brahmávarta, 42.
Buhler, 2.

Caste, 13, 92, 93.
Ceremonial Forms, 6.
Child-marriage, 21.
Civil Courts, 45.
Co-emptio, 94.
Comus, 7.
Confariatio, 95.
Consensus non Concubitus, 60.
Conventio in manum, 96.
Cum Copula, 83.

Daiva, 6. 19, 35, 36, 53. 63, 78.
Dharma, Meanings of, 82.
Dharmya and Adharmya, 11, 14, 16, 51, 52.
Draupadí, 12.
Dushyanta, 34.

Endogamy, 11, 13, 66.

Factum Valet, 16, 49, 51, 53.
Facit Matrimonium, 60.

Gándharva, 7, 9, 15, 21, 22, 25, 26, 27, 29, 53.
Ganeśa, 89.
Ganges, 89.
Gift of the Maiden, 33, 37, 64 79, 80, 81.
Gṛihya, 61.
Gṛihya Sùtras, 69.

Harihara, 66.
Hellen, 23.
Herodotus, 8.
Homer, 23.

India, Ancient, 46.
"India, Vedic," 4, 63.
Institutions, interpretation of past, 74.

Jus Gentium, 50, 59.

Kálidása, 17, 28, 90.
Kanyádána, 64, 79, 81.
Káshyapa, 57.
Kavís, 16, 19, 49, 51.
Kaya Marriage, 67.
Khavás, 7.
Krishna, 25. 90.
Kshatriyas, 9, 15, 16, 29, 50, 52, 89.
Kullùka, 17, 56, 57. 72.

Law, English Common, 65, 75.
„ Hindu, 2, 84.
„ of Property, 26, 27, 53, 54,
„ Roman, 59.
„ of Scotland, 29.
Lear, King, 19.
Love, Ideal of, 70.

MacDonell, 7, 8, 61.
Mahábhárata, 11, 31.

NATIONAL ARCHIVES OF INDIA

Maine, Sir Henry, 85.
Mandḷika, 4, 12, 34, 67.
Manu, 3, 9, 13, 18, 79, 82.
Manu's Work as a Legislator, 58.
Marriage, Aims of, 46, 47.
" and Caste, 18.
" Child, 21.
" Christian, 43.
" Compound, 22, 25, 28, 50, 52,
" Consent of the Bride and the Bridegroom in, 55.
" Duties of, 43.
" Equality in, 72.
" Forms of, 3, 6, 82,
" Forms of, Order of, 18.
" Forms of, Order of, Object of, 62, 63.
" Freedom in, 78, 81.
" History of, 5, 31, 59, 67, 80, 85.
" Hymn in the Vedas, 4, 64.
" Ideal of, 47, 91.
" Káya, 67.
" Love in, 45, 70, 73.
" and Mantras, 43, 70, 87.
" Modern Hindu, 84.
" Vedic, 4, 5, 70.
Mater Familias, 93.
Mayne, J. D. 2, 10, 12, 13, 14, 18, 24, 34, 37, 55, 60.
Mayúkha, 54.
Max Muller, 8.
Milton, 7.
Mitákshará, 54, 56.
Moncreiff, 29.
Monogamy, 34, 67, 88, 90.
Myths and Society, 67, 68.

Náráyana Bhatta, 17.
Niyoga, 12.
Non-Aryan Customs, 88, 96.
" " Influence of, 10, 34, 35, 85, 88, 90, 91, 92.

Paiśácha, 7, 21, 49, 51, 83.
Pancha Maháyagña, 61.
Paráśara, 29.
Párijáta, 66.
Paris, 23.
Pater Familias, 92.
Patria Potestas, 45, 81, 82.
Patriarchy, 35.
Polyandry, 67.
Polygamy, 77, 88, 91, 92.
Principles to Unravel Past History, 68.
Property, Law of, 26, 27, 53, 54.
" Right of Widows to inherit, 55.
Propositus, 54.
Putriká, 55.

Rákshasa, 7, 16, 21, 22, 95.
Ráma, 22, 24, 90.
Rámáyana, 11, 22.
Rávana, 23, 24, 31.
Res Mullius, 59.
Rik, 43, 44, 70.
Ritvij, 18, 36, 64, 77, 78.
Rome, 11, 92, 93, 95.

Śakuntalá, 28, 34, 57, 64, 78.
Sáma, 43, 44, 70.
Samyoga, 83.
Samvanana, 4, 32.
Saptapadí, 6, 41, 43, 71, 75, 88
Shakspeare, 19.
Sitá, 23, 24, 31.
Śiva 89, 90.
Soma, 45.
Sons, 91.
Śrauta, Sútras, 69.
Stages of Life, 39, 66.
Stridhana, 54, 55.
Śúdras, 16, 46, 52, 66, 87.
Śúdriká-suta, 56.
Sugriva, 22.
Sui Juris, 65.
Śúlka, 52.
Śvetaketu, 12.
Svyamvara, 30, 31.

Upanayana, 85.
Usus, 59, 94.

NATIONAL ARCHIVES OF INDIA

Váli, 22.
Vaiśyas, 16, 52.
Vedic Hymns, 4, 72.
" Vedic India," 4, 63.
Vedic Religion, 61.
Vidhi, 82. 83.
Vikramorvaśi, 28.
Vinculum Juris, 84.
Vishṇu, 89, 90.
Vitata or Vaitanika, 28, 33, 40, 57, 61 75, 77.
Viváha, 40, 56.
Vyása, 12, 29.

West, 2, 54.
Widow's Right to Inherit Property, 55.
Woman's Position. 26, 36, 45, 72, 73, 86, 87. 88, 93.

Yágñvalkya, 54, 57.
Zoroaster, 90.

NATIONAL ARCHIVES OF INDIA

NATIONAL ARCHIVES OF INDIA

NATIONAL ARCHIVES OF INDIA

Digitized with financial assistance from

NSDL
Technology, Trust & Reach
on 16 November, 2018

NATIONAL ARCHIVES OF INDIA